

When recorded, return to:
City of Mesa
20 East Main Street, #750
Mesa, Arizona 85211
Attn: Real Estate Services Director

DEVELOPMENT AGREEMENT

(Spring Training Facilities)

By and between

CITY OF MESA, ARIZONA, an Arizona municipal corporation;

and

CHICAGO CUBS BASEBALL CLUB, LLC, a Delaware limited liability company

_____, 2011

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DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is made by and between the City of Mesa, an Arizona municipal corporation (the “**City**”), and Chicago Cubs Baseball Club, LLC, a Delaware limited liability company (“**Cubs**”). The City and Cubs are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**.” Capitalized terms used in this Agreement (including this introductory paragraph) shall have the meanings ascribed to them parenthetically in this Agreement and in Section 1 below.

RECITALS

A. Cubs is the sole owner and holder of the Chicago Cubs baseball team (the “**Team**”) and all franchise rights existing with respect to the Team granted by Major League Baseball.

B. The Team has conducted its Spring Training at facilities located within the City for 46 years, starting in 1952, presently playing at the City’s HoHoKam Park and utilizing other facilities at the City’s Fitch Park.

C. Cubs has previously announced it would consider conducting its Spring Training elsewhere unless the City was able to provide the Team an updated, “state of the art” stadium and training and related facilities, similar to those being provided to Cactus League teams by other municipalities in the metropolitan Phoenix area.

D. The City acknowledges the existing facility may be sufficient in size and scope for many purposes and teams but does not have the capacity or amenities to maximize the benefits of the Team to the City’s economy. The City is interested in providing the Team with newer facilities, in order for Cubs to cause the Team to continue to conduct its spring training, player development and related activities (collectively, “**Spring Training**”) in the City, while concurrently providing greater direct (e.g. sales taxes) and indirect (e.g., tourism) revenues to the City.

E. Attendance at the Team’s Spring Training games has historically been generally higher than any other Cactus League team and generates significant tax revenue for the City, the region and the state.

F. The City, acting through its City Council, has found and determined in the exercise of its legislative discretion the Cactus League and Cubs Spring Training are important community assets providing significant derivative economic benefits and community amenities for the City’s residents, businesses and visitors, as well as significant regional and state economic benefits. The City is committed to maintaining and enhancing these important community benefits.

G. The Parties have identified a site, owned by the City and legally described on Exhibit A and depicted on Exhibit B attached hereto (the “**City Site**”), a portion of which can accommodate the Spring Training Facilities. The City has determined, in its legislative discretion, that such portion of the City Site, as currently used, is under-utilized.

H. Cubs are willing and desire to continue their Spring Training in the City, subject to and in accordance with the terms and conditions of this Agreement, if a new stadium and appurtenant baseball-related improvements (collectively, the “**Spring Training Facilities**”), Public Parking and the other Improvements contemplated by this Agreement are provided within those areas of the City Site depicted on Exhibit B attached hereto (“**Spring Training Facilities Site**”), and if certain operational and use rights

are granted to Cubs in accordance with the terms and conditions of the Facilities Use Agreement attached to this Agreement as Exhibit D.

I. In addition to Cubs' use as described herein and in the Facilities Use Agreement, the Stadium and the other Spring Training Facilities will provide significant use and enjoyment for the residents of the City of Mesa and the more than 100,000 fans who come to the City to watch baseball each year at Spring Training, and for other entertainment and cultural events (whether baseball-related, or otherwise) proposed to be held at the Spring Training Facilities throughout the year.

J. In addition to Cubs' use as described herein and in the Facilities Use Agreement, the Stadium and Spring Training Facilities will provide significant full-time and part-time employment opportunities for the residents of the City, with the City and Cubs anticipating Cubs will hire certain full-time employees for office and administrative purposes at the Spring Training Facilities Site, and further providing employment opportunities for potentially as many as a thousand part-time employees, vendors and concessionaires, not including at least twenty-five (25) Major League or Minor League baseball players with an average annual salary in excess of \$100,000.00, who will use the facility at times throughout the year upon full implementation of the Spring Training Facilities.

K. The City will realize increased direct, pecuniary, indirect and intangible benefits as a consequence of constructing the Spring Training Facilities, Public Parking, new public park amenities and other Improvements contemplated by this Agreement within the City, including the potential for development of unique entertainment, recreation and other facilities within the Spring Training Facilities Site and on the remaining portions of the City Site, thus enhancing the quality of life of the City's residents and conferring significant economic and non-economic benefits upon the City. The development, redevelopment, operation and expansion of uses of the Spring Training Facilities Site are of such value and significance to the City, the City desires to undertake and facilitate development and operation of the Spring Training Facilities, Public Parking and other Improvements contemplated by this Agreement, subject to and in accordance with the terms and conditions of this Agreement.

L. The City Council has determined, in the exercise of its legislative discretion, and based upon independent economic analysis commissioned and paid for by the City, the objective fair market value of the payment and performance obligations of Cubs which have been bargained for in this Agreement and the Facilities Use Agreement, including but not limited to Cubs' contractual commitment to occupy and use the Spring Training Facilities for the Term of the Facilities Use Agreement, exceeds the benefits conferred on Cubs by the City under this Agreement and the Facilities Use Agreement.

M. The Parties agree and intend that the acts of the Parties described in and required by this Agreement (including but not limited to the obligations of the City to cause the Completion of Construction of the Spring Training Facilities, and the obligations of Cubs to use the Spring Training Facilities as Cubs' exclusive Spring Training headquarters and as a site for Cubs' player development, and to play Cubs' Spring Training games in Mesa for the term of the Facilities Use Agreement, which Cubs presently is neither obligated nor under any legal compulsion to do, but which represents a free and voluntary decision by Cubs) are specifically and expressly "bargained for" by and between the Parties as part of the Parties' promised performance to each other, and therefore constitute "consideration" to support this Agreement, as required by *Turken v. Gordon*, 207 P.3d 709 *et seq.* (Ariz. 2010).

N. This Agreement is a "development agreement" within the meaning of, and is authorized and entered into pursuant to, the provisions of A.R.S. §9-500.05 in order to facilitate the development of the Spring Training Facilities, Public Parking and other Improvements contemplated by this Agreement by addressing, among other matters, certain matters relating to such development. The Parties

acknowledge the terms of this Agreement shall constitute covenants running with the land comprising the Spring Training Facilities Site.

O. The contemplated development, redevelopment, operation and use of the Spring Training Facilities Site, as contemplated by this Agreement, are consistent with the Mesa 2025 General Plan (the “**General Plan**”) and will operate to the benefit of the Parties and the general public.

P. The City has determined the actions taken and expenditures contemplated by the City pursuant to this Agreement are in connection with economic development activities as this term is used in A.R.S. §9-500.11.A, and will enhance the economic vitality of the City in numerous ways, including without limitation: (i) increasing transaction privilege tax revenues and other revenues to the City; (ii) assisting in the creation and retention of jobs; (iii) increasing the City’s employment base; (iv) establishing the City as a resort destination for City and Maricopa County and State residents, as well as for visitors from elsewhere in the United States, and international visitors from Mexico, Canada, and other countries; (v) encouraging the development of additional restaurants, shops and other amenities on or adjacent to the Spring Training Facilities Site and elsewhere, for residents of the City of Mesa and others; (vi) Cubs’ committing to remain in Mesa and locate its Spring Training facilities in the City for the term of this Agreement; (vii) stimulating further economic development; and (vi) otherwise improving and enhancing the economic welfare of the residents of the City.

Q. On November 2, 2010, a majority of the City electorate voting thereon approved and authorized the City to expend public funds, grant tax concessions or relief, or incur debt in an amount greater than \$1,500,000.00, and/or grant City-owned land of a fair market value in excess of \$1,500,000.00 to construct or aid in the construction of, and future capital improvement of, a City-owned stadium, training, and practice facility for Cactus League Spring Training baseball (“**Election**”).

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing introductory paragraphs and Recitals, and the representations, mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

1. **Definitions.** In this Agreement, unless a different meaning clearly appears from the context:

1.1 “**AAA**” means as defined in Exhibit F-2.

1.2 “**ADA**” means as defined in Section 5.9.

1.3 “**Acceptance of Possession**” means as defined in Section 5.11.

1.4 “**Additional City Obligations**” means as defined in Section 3.3.

1.5 “**Additional Cost Cap**” means as defined in Section 3.3.

1.6 “**Additional Improvements**” means as defined in Section 3.2.2.

1.7 “**Affiliate**,” as applied to any Person, means the Person and any Person directly or indirectly controlling, controlled by, or under common control with, the Person or a blood relative or spouse of such Person, if such Person is a natural person. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or

cause the direction of the management and policies of the Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “Person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, municipal corporations, municipalities and other organizations, whether or not legal entities.

1.8 “**Agreement**” means this Development Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The introductory paragraphs and Recitals set forth above are incorporated herein by reference and form a part of this Agreement.

1.9 “**Applicable Laws**” means the federal, state and county laws, rules, ordinances and regulations and City Regulations in effect at the time (i) any submittal relating to the Spring Training Facilities or other Improvements contemplated by this Agreement or applicable component thereof is made to the City; or (ii) a determination of compliance of the Parties with respect to their obligations under this Agreement is otherwise necessary or appropriate under this Agreement.

1.10 “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

1.11 “**Cactus League**” means the Major League Baseball teams conducting Spring Training in Arizona during the Spring Training Season.

1.12 “**Capital Improvements Account**” means as defined in Section 3.4.

1.13 “**City**” means as defined in the introductory paragraph preceding the Recitals of this Agreement.

1.14 “**City Code**” means the Code of the City of Mesa, Arizona, as amended from time to time.

1.15 “**City Council**” means the City Council of the City.

1.16 “**City Fields**” means as defined in Section 2.3.

1.17 “**City Fields Parking**” means as defined in Section 0.

1.18 “**City Fields Site**” means as defined in Section 2.3.

1.19 “**City-Owned Utility Infrastructure**” means water (potable and non-potable), wastewater (sanitary sewer) and natural gas infrastructure and facilities, including all conduit, pipes or other means of providing water, sewer and gas services, together with all necessary Third Party dedications, easements or other rights-of-way.

1.20 “**City Regulations**” means the City charter, City Code, ordinances, rules, regulations, standards, procedures and administrative policies in effect from time to time.

1.21 “**City Site**” means as defined in Recital G.

1.22 “**Commencement of Construction**” means the occurrence of both: (i) the obtaining of a building, excavation, grading or similar permit; and, (ii) the actual commencement of physical construction operations in a manner reasonably designed to cause, and with the intent at the

commencement of such construction to diligently pursue, Completion of the Spring Training Facilities and such other Improvements as contemplated by this Agreement.

1.23 “**Complete**” or “**Completion**” means, with respect to each Improvement which is the subject of this Agreement: (a) the Improvement is operational and fully usable in all material respects for its intended use in accordance with all Applicable Laws and this Agreement; (b) all required governmental permits, approvals and certificates of occupancy (as applicable) have been properly, validly and permanently issued; (c) Acceptance of Possession has occurred; and (d) the City has reasonably issued, and Cubs has reasonably accepted, the Final Acceptance or Substantial Completion, whichever is applicable, in accordance with the construction contract documents (subject only to minor and insubstantial “punch list” items which do not affect the operation or use of the Improvement for its intended use in accordance with all Applicable Laws and this Agreement, as applicable).

1.24 “**Completion Notice**” means as defined in Section 5.11.

1.25 “**Comprehensive Sign Plan**” means as defined in Section 5.8.2.

1.26 “**Condition of Title**” means all matters regarding the title to the City Site and other sites comprising required dedications, easements or rights-of-way as contemplated by this Agreement, including without limitation all exceptions or conditions to title, whether or not of public record. Any exception to or condition of title that (i) could materially increase the cost of, or materially delay, interfere with or impair development, construction and operation of the Spring Training Facilities Project as contemplated by this Agreement, and (ii) is not reasonably approved by Cubs in writing upon request by the City, shall be deemed to constitute an “Excluded Exception.”

1.27 “**Control**” means as defined in Section 1.7.

1.28 “**Correction Notice**” means as defined in Section 5.11.

1.29 “**Cubs**” means as defined in the introductory paragraph preceding the Recitals of this Agreement.

1.30 “**Cure Period**” means as defined in Section 10.1.

1.31 “**Default**” means as defined in Section 10.1.

1.32 “**Default Notice**” means as defined in Section 10.1.

1.33 “**Default Rate**” means the published Wall Street Journal U.S. Prime Rate plus four percent (4%).

1.34 “**Defaulting Party**” means as defined in Section 10.1.

1.35 “**Effective Date**” means the date on which all of the following have occurred: (i) this Agreement has been adopted and approved by Cubs and has been executed by duly authorized and appropriate representatives of Cubs; (ii) this Agreement has been adopted and approved by the City Council and has been executed by duly authorized and appropriate representatives of the City; and (iii) this Agreement has been recorded in the office of the Recorder of Maricopa County, Arizona. Notwithstanding the foregoing, there may be conditions to the effectiveness of this Agreement satisfied after the Effective Date.

- 1.36 “**Election**” means as defined in Recital Q.
- 1.37 “**Electric Power Infrastructure**” means as defined in Section 3.2.2.4.
- 1.38 “**Enforced Delay**” means as defined in Section 5.10.2.
- 1.39 “**Excluded Condition**” means as defined in Section 1.72.
- 1.40 “**Excluded Exception**” means as defined in Section 1.26.
- 1.41 “**Facilities Use Agreement**” means as defined in Section 3.14.

1.42 “**Facilities Equipment**” means (i) any furnishings, fixtures and equipment so affixed to the realty or Improvements they are deemed part of the realty, e.g., mounted cupboards and cabinets, telephone, affixed furnishings and equipment related to viewing Stadium events, audio or alarm systems incorporated within the buildings constituting the applicable Improvements, mounted flat-screen televisions, video equipment and software included as part of initial construction (but not part of subsequent capital improvements) and including without limitation cables and wiring (but only if placed inside interior walls) to any elements or item listed in this Section 1.42; and (ii) non-affixed suite and patio furniture, press box furniture and similar Stadium-related elements provided as part of the initial furnishings only. Except as expressly noted in the previous sentence, Facilities Equipment does not include any non-affixed material or equipment, any furniture, any computer equipment or software, telephone handsets, supplies and similar items.

- 1.43 “**Financing Amount**” means as defined in Section 3.2.

- 1.44 “**General Plan**” means as defined in Recital O.

1.45 “**Governmental Approvals**” means any governmental approvals, permits and authorizations submitted by or on behalf of the City in respect of the Spring Training Facilities Site including without limitation any approvals, permits and authorizations pertaining to on- and off-site drainage (including storm water retention, runoff and pollution protection), air quality (including dust control), transportation, water (supply and use), water and sewer service and infrastructure, electrical and other utility service and infrastructure, land use (including building, lighting and signage location, height, configuration and uses), archeological, biological or environmental constraints or conditions and fire and public safety service and facilities.

1.46 “**Improvement**” shall mean each of the Stadium, Team Facilities, City Fields, Public Parking, Additional Improvements and certain other improvements included as Additional City Obligations.

- 1.47 “**Inspection**” means as defined in Section 5.11.

1.48 “**Lease Agreement**” means the lease for HoHoKam Stadium and Fitch Park between the City and Cubs, dated March 31, 1996, and any fully executed amendments thereto.

- 1.49 “**Milestone**” means as defined in Section 5.3.

1.50 “**Master Plans**” means any infrastructure master plans prepared by or on behalf of the City in respect of the Spring Training Facilities Site, including without limitation master plans pertaining to on- and off-site drainage (including storm water retention, runoff and pollution protection),

transportation (vehicular, mass transit, cycle and pedestrian) infrastructure, water and sewer infrastructure, electrical and other utility infrastructure, archeological, biological or environmental mitigation plans, and fire and public safety facilities.

- 1.51 “**Mortgage**” means as defined in Section **Error! Reference source not found.**
- 1.52 “**Mortgagee**” means as defined in Section **Error! Reference source not found.**
- 1.53 “**Omitted Mortgagee**” means as defined in Section **Error! Reference source not found.**
- 1.54 “**Objection Notice**” means as defined in Section 7.
- 1.55 “**Off-Site**” means outside the boundaries of the Spring Training Facilities Site.
- 1.56 “**On-Site**” means within the boundaries of the Spring Training Facilities Site.
- 1.57 “**Outside Commencement Date**” means July 15, 2013.
- 1.58 “**Party**” and “**Parties**” means as defined in the introductory paragraph preceding the Recitals of this Agreement.
- 1.59 “**Pre-Termination Notice**” means as defined in Section 11.
- 1.60 “**Pre-Termination Notice (Change in Law)**” means as defined in Section 13.1.
- 1.61 “**Project**” means the Spring Training Facilities, the Public Parking and the other Improvements (both On-Site and Off-Site) contemplated by this Agreement.
- 1.62 “**Project Budget**” means as defined in Section 5.5.
- 1.63 “**Project Committee**” means as defined in Section 5.1.
- 1.64 “**Project Personnel**” means as defined in Section 5.1.
- 1.65 “**Project Schedule**” means as defined in Section 5.3.
- 1.66 “**Providing Party**” means as defined in Section 17.6.
- 1.67 “**Public Parking**” means parking for a minimum of 2,500 automobiles in accordance with Applicable Laws within those portions of the Spring Training Facilities Site designated for Public Parking on Exhibit B and which is in addition to Stadium Parking, Team Facilities Parking and City Fields Parking. The Public Parking (i) need not be improved, asphalt, cement or otherwise; (ii) shall be finished and engineered as determined by the City in its reasonable discretion; and (iii) may be provided (in whole or in part) by the temporary or occasional use of grass soccer fields and other “green” areas within the Spring Training Facilities Site.
- 1.68 “**Public Street Improvements**” means roadways, driveways, streets and other public right-of-way improvements, including without limitation all site preparation, street paving, curb, gutter, sidewalks and other pedestrian walkways, bike or other alternative transportation facilities or lanes (as applicable), traffic control devices (including traffic signals and signage) and landscaping, together with all necessary Third Party dedications, easements or other rights-of-way.

1.69 “**Recitals**” means the recitals numbered “A” through “P” set forth in the Recitals portion of this Agreement following the introductory paragraphs.

1.70 “**Requesting Party**” means as defined in Section 17.6.

1.71 “**Resolution**” means as defined in Section 5.10.1.

1.72 “**Site Conditions**” means all On-Site and Off-Site physical (including, without limitation, archeological, biological and environmental) conditions and constraints affecting the development, use and occupancy of the Spring Training Facilities Site, including as may be referenced in the Studies, Assessments, Surveys and Reports. Any Site Condition that (i) could materially increase the cost of, or delay, interfere with or impair development, construction and operation of the Project as contemplated by this Agreement, and (ii) is not reasonably approved by Cubs in writing upon request from the City, shall be deemed to constitute an “Excluded Condition.” Notwithstanding and without limiting the foregoing, the underground storage tanks located on the Spring Training Facilities Site (“UST’s”) and which are intended to be removed as part of the Project are Site Conditions that are not Excluded Conditions; provided, however, if removal and, if applicable, remediation action in respect of the UST’s will require an expense in excess of \$300,000.00, then the UST’s shall be deemed to be an Excluded Condition.

1.73 “**Site Master Plan**” means as defined in Section 5.2.

1.74 “**Spring Training**” means as defined in Recital D.

1.75 “**Spring Training Facilities**” means the Stadium, Team Facilities and City Fields.

1.76 “**Spring Training Facilities Design Specifications**” means the general design specifications for the Spring Training Facilities, preliminary to the finalization of the Plans, to be agreed to by the City and Cubs pursuant to Section 5.6.

1.77 “**Spring Training Facilities Plans**” means the site plan, program description, and description of all On-Site and Off-Site Improvements and detailed drawings setting forth the size and character of each of the Spring Training Facilities, to be approved by the Project Committee pursuant to Section 5.6, as the same may be hereafter created or revised until Completion of the Spring Training Facilities and other Improvements which are the subject of this Agreement.

1.78 “**Spring Training Facilities Site**” means as defined in Recital H.

1.79 “**Spring Training Season**” means the period from February 1 through April 30, inclusive, of each year of the Term or such other times before or after these dates which Major League Baseball defines as its spring training practice season or in which at least five other teams in the Cactus League participate in training and development activities or games featuring a majority of their Major League players.

1.80 “**Stadium**” means as defined in Section 2.1.

1.81 “**Stadium Events**” means all events held at the Stadium including, but not limited to, Cubs home Spring Training baseball games, other entertainment-related events and all ancillary activity related thereto as described in, and permitted by, the Facilities Use Agreement.

1.82 “**Stadium Parking**” means as defined in Section 2.1.

1.83 “**Stadium Site**” means as defined in Section 2.1.

1.84 “**Status Statement**” means as defined in Section 17.6.

1.85 “**Studies, Assessments, Surveys and Reports**” means any studies, assessments, surveys and reports prepared by or on behalf of the City in respect of the City Site, including without limitation studies, assessments, surveys and reports pertaining to on- and off-site drainage (including storm water retention, runoff and pollution protection), air quality (including dust control), transportation (vehicular, mass transit, cycle and pedestrian), water supply and use, water and sewer infrastructure, electrical and other utility service and infrastructure, land use (including building, lighting and signage location, height and configuration), archeological, biological and environmental constraints or conditions, and fire and public safety needs and facilities.

1.86 “**Team Facilities**” means as defined in Section 2.2.

1.87 “**Team Facilities Parking**” means as defined in Section 0.

1.88 “**Team Facilities Site**” means as defined in Section 2.2.

1.89 “**Term**” shall mean the Term as provided in Section 15.

1.90 “**Termination Notice**” means as defined in Section 11.

1.91 “**Termination Notice (Change in Law)**” means as defined in Section 13.1.

1.92 “**Third Party**” means any Person (as defined in Section 1.7) other than a Party or an Affiliate of a Party.

2. **Spring Training Facilities.** The Spring Training Facilities include the Stadium, Team Facilities and City Fields, all of which shall incorporate features, Facilities Equipment and amenities as set forth in this Agreement, including without limitation all elements described in Sections 2.1, 2.2 and 2.3 below, and all of which, except as Cubs otherwise approve, shall be designed and constructed to be consistent with facilities (which, for this purpose, shall mean the same or materially similar features, amenity elements, capacity, size and character) at the forefront of all Cactus League Spring Training facilities and in accordance with the Site Plan set forth as Exhibit B. Without limitation of the foregoing, the Spring Training Facilities shall include the features, designs, elements, Facilities Equipment and amenities requested by Cubs, and reasonably approved by the City, provided they are not inconsistent with this Agreement and do not cause the cost of Completion of the Spring Training Facilities to exceed the Financing Amount unless such excess is agreed to, and paid by, Cubs. If requested by Cubs to be excluded from the Spring Training Facilities Site (but not, and expressly excluding, any improvements to be constructed on and within the City Fields Site as described in Section 2.3 below, all of which shall be provided in accordance with the terms of this Agreement), any feature, design, element, Facilities Equipment and amenity shall not be included in the Spring Training Facilities Site. Subject to the foregoing, the Spring Training Facilities shall include:

2.1 **Stadium.** The “**Stadium**” means a City-owned Spring Training baseball stadium and appurtenant facilities within the portion of the Spring Training Facilities Site designated as the Stadium Site on Exhibit B (the “**Stadium Site**”), which consists of a design, features and amenities specified by Cubs, and reasonably approved by the City, consistent with the terms of this Agreement, including (a) seating (fixed and berm) for 15,000 patrons, with the potential to expand to 20,000, if requested by Cubs,

by adding 5,000 additional berm seats (the cost of which shall be included in the Financing Amount); and (b) adjacent improved surface parking (“**Stadium Parking**”) consisting of a minimum of 250 spaces.

2.2 **Team Facilities.** The “**Team Facilities**” shall mean a City-owned facility within the portion of the Spring Training Facilities Site designated as the Team Facilities Site on Exhibit B (the “**Team Facilities Site**”), which consists of a design, features and amenities requested by Cubs and reasonably approved by the City, including:

1.1.1 An approximately 50,000 square-foot clubhouse with locker room, meeting rooms, nutritional center, language center, training and administration facility with team offices, dining, classroom, meeting spaces and indoor training for major and minor league baseball players;

1.1.2 A minimum of two Major League-sized practice fields;

1.1.3 A minimum of one practice infield;

1.1.4 A minimum of one agility field;

1.1.5 A minimum of 16 batting tunnels and 16 pitching mounds;

1.1.6 A minimum of 150 parking spaces for staff and player personnel and visitors (the “**Team Facilities Parking**”);

1.1.7 Temporary living spaces for staff and player personnel, including sleeping rooms, dormitory space, cafeteria, restroom and shower facilities and other amenities for 100 staff and player personnel, provided however Cubs shall be solely responsible for any transient occupancy or similar tax payable in connection with the use of such temporary living spaces by each person who is not an employee of Cubs or an employee of a Cubs’ Affiliate (which tax shall be the City-wide average daily room rate as reported by the Mesa Convention and Visitors Bureau, its successor or comparable organization if the Mesa Convention and Visitors Bureau ceases to exist); and

1.1.8 Major League quality lighting for night baseball for at least two of the Major League-sized practice fields included within the Team Facilities unless otherwise determined by agreement of the Parties.

2.3 **City Fields.** The “**City Fields**” shall mean a City-owned facility within the portion of the Spring Training Facilities Site designated as the City Fields Site on Exhibit B (“**City Fields Site**”), which consists of a design, features and amenities reasonably approved by Cubs and the City, including:

1.1.9 A minimum of four Major League-sized practice fields with instructional and viewing capabilities;

1.1.10 100 public parking spaces (the “**City Fields Parking**”);

1.1.11 Lighting, if any, for night baseball for the four practice fields included within the City Fields as Cubs may elect in its discretion to be provided and paid for from the Financing Amount; and

1.1.12 Public restrooms, maintenance facilities and a concession stand, to maximize the utility of the City Fields for use by Cubs during Spring Training and at all other times by the City as a

public facility during the remainder of the year, although the extent of such items shall be reasonably determined by the Project Committee.

2.4 Existing Cubs Facilities Equipment. At Cubs' election, existing removable Facilities Equipment at HoHoKam Stadium or Fitch Park which has been purchased by Cubs may be moved and used in the Stadium or Team Facilities, in which event Cubs shall be responsible for all costs of removal and relocation of such Facilities Equipment to the Stadium or Team Facilities, as applicable.

2.5 Matters Pertaining to the Spring Training Facilities Site. The City has selected the Spring Training Facilities Site and Cubs has determined the Spring Training Facilities Site is satisfactory for Cubs' use following a review of available properties and sites within the City, as Cubs' preferred site for the Spring Training Facilities, as generally depicted in the Site Plan attached to this Agreement as Exhibit B. Any material revision or modification of, or amendment to, the Site Plan shall require the prior written consent of both Parties; provided, however, non-material revisions may be made on behalf of the Parties by and with the mutual concurrence of their Designated Representatives. By way of example and not of limitation, non-material revisions may include adjustments in the location, position or scale of features or amenities which do not cause the total cost of the Project to exceed the Financing Amount and/or the Additional Cost Cap (as applicable) and do not affect the use of the Spring Training Facilities as a spring training facility by a Major League Baseball team. For the avoidance of doubt, and notwithstanding anything herein to the contrary, this Section 2.5 is not intended to limit or amend the provisions of Section 2, Section 2.4, Section 3.7 or other express terms of this Agreement pertaining to features or amenities which may or are to be included in or, if applicable, excluded from the Spring Training Facilities.

3. City Payments and Project Obligations.

3.1 Spring Training Facilities Site. The City shall cause the Spring Training Facilities to be Completed and shall provide the Public Parking on the Spring Training Facilities Site. Without limitation of the foregoing, the obligations of the Parties with respect to the construction of the Spring Training Facilities, Public Parking and other Improvements contemplated by this Agreement in all events shall be subject to this Agreement and all Applicable Laws.

3.2 Financing Amount. The City shall undertake all actions and undertakings as necessary to pay up to Eighty-Four Million Dollars (\$84,000,000.00) (the "**Financing Amount**") for the following obligations of the City in accordance with the Project Budget and the Project Schedule:

3.2.1 Spring Training Facilities. To procure and pay the costs of, and cause to be performed, the design, plans and specifications, required Governmental Approvals, required site work, construction and Completion of the Spring Training Facilities as determined by the Project Committee, including procuring and paying the costs of services provided by Third Party technical registrants, contractors and consultants, subject to the terms and conditions set forth in this Agreement.

3.2.2 Additional Improvements. To procure and pay the costs of, and cause to be performed, the design, plans and specifications, required Governmental Approvals, required site work, construction and Completion, as applicable, of the following "**Additional Improvements**," which shall not include any item included in the Additional City Obligations as set forth in Section 3.3 or other obligation of the City set forth elsewhere in this Agreement:

3.2.2.1 On-Site Utility Infrastructure. All City-Owned Utility Infrastructure and dry utility infrastructure within the Spring Training Facilities Site, including any On-Site improvements or other On-Site work required to increase the size or capacity of City-Owned Utility

Infrastructure or dry utility infrastructure to provide water, wastewater (sanitary sewer), gas services and any dry utility services, adequate to serve all intended uses and/or any ancillary development contemplated to occur within the City Site. The Parties shall reasonably agree on the size and location of such City-Owned Utility Infrastructure and dry utility infrastructure.

3.2.2.2 Irrigation Water Improvements. The Project Committee shall determine the method of irrigation water delivery and storage to the Spring Training Facilities Site. Additional Improvements shall include all work and other improvements, if any, required in connection with pumps, laterals, pipes, tanks and lifts comprising water delivery and storage infrastructure to (e.g., from Well 27, which is located outside the City Site) or within the City Site to the extent necessary to provide irrigation water to the Spring Training Facilities.

3.2.2.3 Public Street Improvements. Public Street Improvements in sufficient scope and capacity to provide access to the Stadium adequate to serve the intended uses of the Stadium as generally depicted on the rendering, rough design and schematic layout attached hereto as Exhibit C; provided, and subject to the foregoing, the City shall fund, as Additional City Obligations (as defined in Section 3.3 below) and subject to the Additional Cost Cap, the cost of additional Public Street Improvements which provide access to those portions of the Spring Training Facilities Site other than the Stadium Site as generally described in Section 3.3.3 below.

3.2.2.4 On-Site Electric Power Infrastructure. On-Site electric utility infrastructure and appurtenant facilities (including conduit, lines and transformers) (collectively, “**Electric Power Infrastructure**”), in sufficient scope and capacity to provide electric power service adequate to serve all intended uses of the Spring Training Facilities; provided the City shall fund as Additional City Obligations (as defined in Section 3.3 below) and subject to the Additional Cost Cap, any cost which is necessary to extend Off-Site Electric Power Infrastructure to the property line of the Spring Training Facilities Site and, as applicable, Electric Power Infrastructure to the property line of the Stadium Site.

3.2.2.5 Parking. Stadium Parking, Team Facilities Parking and City Fields Parking; provided the City shall fund as Additional City Obligations (as defined in Section 3.3 below) and subject to the Additional Cost Cap, all costs of the Public Parking as referenced in Section 3.3.1 below.

3.2.3 Construction-Related Taxes, Fees and Charges. To pay any construction sales taxes or equivalent fees or charges and any governmental application, processing, permit or equivalent fees or charges and payable in respect of the Project prior to Completion of the Spring Training Facilities to the extent and at the rate adopted (or enacted) by the City as of February 27, 2010.

3.2.4 Non-City Personnel. When the services of such personnel are requested by the Project Committee, to pay for any outside (i.e., non-City) personnel retained by the City to provide services in connection with Project.

3.2.5 Construction Contract Contingencies. Any construction contract (including any CMR or similar contract) entered into by the City with respect to the construction of the Spring Training Facilities shall include a provision for a contingency in an amount recommended by the Project Committee and approved by the City with respect to the contract amount (to account for, for example, unforeseen conditions, design errors, etc.), which contingency shall be included in the Financing Amount and used only to the extent needed. Any unused portion shall be used to reimburse Cubs if and to the extent Cubs have paid any Project costs in excess of the Financing Amount with any remaining unused portion segregated by the City in the Capital Improvements Account (as defined in Section 3.4 below)

and usable solely for future Capital Improvements to the Spring Training Facilities as provided in the Facilities Use Agreement.

3.2.6 **Site Conditions.** The remediation of all Site Conditions; provided, however, the remediation of any Excluded Condition that causes the cost of construction of the Spring Training Facilities to exceed the Financing Amount with respect to the reallocation of resources or the sharing of such additional expense, in the absence of an agreement by the Parties within ninety (90) days after the discovery of such Excluded Condition, shall be grounds for the termination of this Agreement by either of the Parties upon written notice to the other in accordance with Section 6.1 and Section 6.2 of this Agreement.

3.2.7 **Miscellaneous Costs.** To pay the liquidated sum of \$50,000.00 to reimburse the City for certain costs and expenses incurred by the City to insure the availability of the Spring Training Facilities Site on a timely basis, to acquire certain geophysical studies and reports applicable to portions of the Spring Training Facilities Site, etc., all of which are acknowledged by Cubs.

3.2.8 **Surveys.** To pay the cost of any boundary surveys of the Stadium Site and Spring Training Facilities Site required by the Facilities Use Agreement.

3.2.9 **Signs.** For the avoidance of doubt, the Parties agree, state and acknowledge that the cost of all signs inside and outside the Stadium, as well as one or more “gateway” signs into the Project area, shall be included within the Financing Amount. Any signs within the Team Facilities Site shall be the sole obligation of Cubs, and any signs used or required by the City within the City Fields shall be the sole obligation of the City (but shall not be an Additional City Obligation). Notwithstanding the foregoing, all signs shall be subject to the provisions of Section 5.8 of this Agreement.

3.2.10 **Use of Bond Proceeds.** In the event that the City recovers monies pursuant to payment or performance bonds as a result of a breach or default by a contractor of any construction contract for the construction of the Project, the City agrees to use such monies for the cost of construction of the Project and in furtherance of Completion.

3.3 **Additional City Obligations.** In addition to the foregoing, the City shall pay and perform the following obligations in accordance with the Project Schedule (“**Additional City Obligations**”), at no cost to Cubs and in addition to the costs included in the Financing Amount as provided in Section 3.2; provided however the City shall not be required to spend more than Fifteen Million Dollars (\$15,000,000.00) (the “**Additional Cost Cap**”) to satisfy the Additional City Obligations. In the event the Additional City Obligations require payments in excess of \$15,000,000.00, then the Project Committee shall reasonably determine which Additional City Obligations to provide, re-allocate or delete. However, for the avoidance of doubt, the Parties acknowledge the Additional Cost Cap is not intended to require Cubs to provide or absorb the cost of items that are Additional City Obligations in excess of the Additional Cost Cap, or to relieve the City from any cost or other consequence of breach of this Agreement by the City.

3.3.1 **Public Parking.** To procure and pay all costs of, and causing to be performed, the design, plans and specifications, required governmental approvals and permits, required site work, construction, landscaping and Completion of the Public Parking.

3.3.2 **Off-Site Utility Infrastructure.** To procure and pay all costs of, and causing to be performed, the design, plans and specifications, required governmental approvals and permits, required site work, construction and Completion of all Off-Site City-Owned Utility Infrastructure and dry utility infrastructure, including all increases in size or capacity of any Off-Site City-Owned Utility Infrastructure

or dry utility infrastructure, to a point on the southern boundary of the Stadium Site reasonably determined by the Project Committee, in sufficient scope and capacity to provide water, wastewater (sewer), natural gas services and dry utilities adequate to serve all intended uses of the Spring Training Facilities and (as applicable) the Public Parking, as generally depicted on Exhibit B.

3.3.3 Public Street Improvements. Except as provided in Section 3.2.2.3 above, to procure and pay all costs of, and causing to be performed, the design, plans and specifications, required governmental approvals and permits, required site work, construction and Completion of (i) all Public Street Improvements that do not provide access to the Stadium as provided in Section 3.2.2.3 and (ii) the addition, improvement or expansion of the capacity of arterial streets in immediate proximity to the Spring Training Facilities Site or within the City Site as determined by the Project Committee to provide access to the Stadium and ingress to and egress from the Spring Training Facilities Site, all as generally depicted on Exhibit C.

3.3.4 Off-Site Electric Power Infrastructure. To procure and pay all costs of, and causing to be performed, the design, plans and specifications, required governmental approvals and permits, required site work, construction and Completion of all Off-Site Electric Power Infrastructure to the property line of the Spring Training Facilities Site and (as applicable) Electric Power Infrastructure to the property line of the Stadium Site as generally depicted on Exhibit B, including conduit, lines and transformers and all necessary easements and rights-of-way, sufficient to provide electric power service adequate to serve all intended uses of the Spring Training Facilities; provided the cost required to extend Electric Power Infrastructure from the property line of the Stadium Site to the Stadium and all other areas within the Spring Training Facilities Site shall be included within the Financing Amount.

3.3.5 Miscellaneous Costs. To pay the liquidated sum of \$50,000.00 to reimburse the City for certain costs and expenses incurred by the City to ensure the availability of the Spring Training Facilities Site on a timely basis, to acquire certain geophysical studies and reports applicable to portions of the Spring Training Facilities Site, the value of which is expressly acknowledged by Cubs.

3.4 Capital Improvements Account. The City shall establish or otherwise denote a special account, to fund the costs of Capital Improvements to the Stadium and Team Facilities during the Term (the “**Capital Improvements Account**”) and, upon the Completion of the Spring Training Facilities, funding and contributing to the Capital Improvements Account, in a manner which does not jeopardize the tax exempt status of any obligation issued to fund the Financing Amount. Any portion of the Financing Amount which has not been expended to pay eligible costs under Section 3.2 or elsewhere in this Agreement, along with all dollars contributed by Cubs to the Capital Improvements Account under the Facilities Use Agreement, shall be held in a segregated account; otherwise the costs of Capital Improvements contributed by the City for the Spring Training Facilities shall be funded as provided in the Facilities Use Agreement, shall be shown as a bookkeeping entry only and may be maintained with other funds of the City.

3.5 Development Fees. In the event the City charges or imposes a development (impact) or equivalent fee, assessment, charge or other similar imposition payable, now or in the future, in respect of the City-Owned Utility Infrastructure or Public Street Improvements which the City is obligated to provide in accordance with the terms and conditions of this Agreement, the City shall pay such fee, assessment, charge or imposition.

3.6 Subsequently-Enacted Taxes. The City shall pay any additional, increased or expanded construction sales tax or equivalent fee or charge, or similar imposition, adopted (or enacted) after February 27, 2010 and which is applicable to the Project.

3.7 **City Fields Lighting and Other Amenities.** The City may, in its sole discretion, elect to provide and pay for any lighting within the City Fields Site and, with the approval of the Project Committee as hereinafter provided, any other amenity within or serving the City Fields Site desired by the City (by way of example, and not of limitation, an electronic scoreboard) in order to maximize the utility of the City Fields as a public facility for those periods other than the Spring Training Season. The Project Committee shall approve such other amenities if such amenities do not materially and adversely affect the use of the City Fields by Cubs during the Spring Training Season for the purposes contemplated by this Agreement and meet the standards of the City of Mesa's Parks and Recreation Department (as opposed, for example, to the standards of Major League Baseball).

3.8 **Additional Public Parking.** Without limitation of the City's obligations as provided in Section 3.3.1, if and to the extent the City elects (in its sole discretion) to provide public parking areas within the City Site in addition to the Public Parking, such parking areas shall be made available to Cubs for Stadium Events on the terms provided in the Facilities Use Agreement.

3.9 **City Personnel.** Except as noted in Section 3.2.4 above, the City shall provide and pay all costs of City personnel engaged to fulfill the City's obligations under this Agreement, as necessary to timely implement the Project.

3.10 **City Public Safety Services.** At all times prior to the Completion of the Spring Training Facilities, the City shall provide all City emergency, traffic control, police, fire and other public safety services related to the construction of the Project only, it being understood such services will be performed by City employees.

3.11 **Excluded Exceptions.** The City shall pay all costs required in connection with, and otherwise effectuating, the resolution or removal of all Excluded Exceptions.

3.12 **Project Plan of Finance.** The City will timely and fully pay the Financing Amount and Additional City Obligations in such manner as the City determines. The City does not intend to fund or to pay the City's obligations under this Agreement, directly or indirectly, by or through the imposition (enacted or adopted after February 27, 2010) of any new, increased or expanded City tax, fee or charge levied or assessed in respect of the construction, development, occupancy, use or operation of the Spring Training Facilities or other Improvements contemplated by this Agreement.

3.13 **Municipal Corporation.** The City shall have the right, in its sole discretion, to use one or more municipal corporations to finance all or portions of the Project, and the City shall pay the cost of establishing, administering and operating any such municipal corporation.

3.14 **Facilities Use Agreement.** Following the initial completion of Spring Training Facilities and other Improvements contemplated by this Agreement and Acceptance of Possession, to pay and perform the City's obligations under the Facilities Use Agreement, to be executed and delivered by the Parties concurrently with this Agreement in the form attached hereto as Exhibit D, which establishes the terms and conditions for the use, operation, maintenance, repair and replacement of the Spring Training Facilities during the Term ("**Facilities Use Agreement**"). Without limitation of the foregoing, in the event this Agreement is terminated prior to Completion and Acceptance of Possession as provided for herein, then either Party may terminate the Facilities Use Agreement upon written notice to the other.

3.15 **Willful Misconduct.** The City will pay all costs resulting from the willful misconduct of the City in connection with its acts or omissions under this Agreement.

3.16 **Other Expenses.** Except as expressly provided in Sections 2.4, 3.2 and 3.3, no expenses related to the Spring Training Facilities or other Improvements contemplated by this Agreement shall be paid from the Financing Amount or credited against the Additional City Obligations (as applicable).

4. **Cubs Payments and Project Obligations.** Cubs shall be obligated to pay and perform the following obligations:

4.1 **Costs in Excess of Financing Amount.** To pay the cost of items referenced in Section 3.2, if any (and expressly excluding any items which are Additional City Obligations), which in the aggregate exceed the Financing Amount, provided any such excess is included in a Project Budget reviewed and approved pursuant to the provisions of Article 5. Such costs shall be billed to Cubs not more frequently than monthly and shall include such reasonable documentation to establish the amount(s) owing. Payment of such undisputed costs shall be made by Cubs and received by City within thirty (30) days of the receipt by Cubs of the bill for such costs. Notwithstanding the foregoing or anything herein to the contrary, in no event will Cubs be obligated for the payment of any amount in excess of 89.9% of the total cost of the Spring Training Facilities.

4.2 **Cubs Personnel.** To provide and pay all costs of Cubs personnel (i.e., direct employees of Cubs, or contractors utilized by Cubs) whose services are required to fulfill Cubs' obligations under this Agreement including as necessary to timely implement the Project.

4.3 **Assistance with HoHoKam and Fitch Park.** To provide reasonable assistance to the City, as reasonably requested but at no out-of-pocket cost to Cubs, in the City's effort to obtain another Major League Baseball team to use HoHoKam Stadium and Fitch Park for Spring Training activities after Cubs move to the new Spring Training Facilities.

4.4 **Facilities Use Agreement.** Following the Completion of the Spring Training Facilities and other Improvements contemplated by this Agreement and Acceptance of Possession, to pay and perform Cubs' obligations under the Facilities Use Agreement.

4.5 **Willful Misconduct.** To pay all costs resulting from the willful misconduct of Cubs in connection with its acts or omissions under this Agreement.

5. **Project Design and Development.** The City shall undertake and pursue, diligently and in good faith, the Project and its other obligations arising under this Agreement, including the Commencement of Construction and Completion of the Project in accordance with the Project Schedule and the Project Budget.

5.1 **Project Committee.** To facilitate the effective participation of the Parties and the performance of the Parties' obligations under this Agreement, a committee ("**Project Committee**") shall be established, which shall include the City Manager (or his designee), a representative of Cubs and four other persons, two designated by the City Manager and two designated by Cubs, to administer the Project and make recommendations to the City and Cubs concerning all material aspects of the Project. Without limitation of the foregoing, the City acknowledges, in light of Cubs' obligations under this Agreement including the obligation pay certain costs of the Spring Training Facilities in excess of the Financing Amount, it is necessary and appropriate for Cubs to provide detailed input into all such matters including the procurement of Third Party services, *e.g.*, advisers, the owners' representative, design professionals, technical registrants, contractors, sub-contractors and consultants ("**Project Personnel**"), the Spring Training Facilities Design Specifications and the Spring Training Facilities Plans and to have approval rights with respect to those matters provided in this Article 5. Without limitation of the foregoing, the City will not proceed with any material aspect of the Project or with the selection of any contractor,

architect or other material personnel, budgetary or design element of the Project, and will not enter into any contract related to this Agreement or authorize any expenditure related to the Project, without the prior review and reasonable approval of a majority of the Project Committee.

5.2 Site Master Plan. The City, diligently and subject to the review and recommendations of the Project Committee, shall cause and complete the preparation of a conceptual development plan for the Spring Training Facilities Site, including the portion of the Spring Training Facilities Site which will be used for the Public Parking (“**Site Master Plan**”). Without limitation, the Site Master Plan shall: (i) include an analysis of current land-use and other entitlements for the Spring Training Facilities Site, in light of the planned development, use and operation of the Spring Training Facilities and other Improvements on the Spring Training Facilities Site and other factors the Parties determine are relevant and necessary; (ii) identify all necessary Governmental Approvals and Third Party approvals, including all permits and agreements, which are necessary to develop, use and operate all planned Improvements on the Spring Training Facilities Site; (iii) identify any environmental, biological or cultural resource matters which could affect the development, use and operation of the planned Improvements on the Spring Training Facilities Site and the anticipated means of addressing the same (if and to the extent applicable); (iv) identify existing and anticipated Off-Site and On-Site Public Street Improvements necessary to provide adequate ingress and egress to and from, and circulation within, the Spring Training Facilities Site; (v) identify existing and anticipated Off-site and On-site drainage corridors and facilities (as well as any necessary additional drainage analysis which may be required), utility corridors and other locations for City and other utility services and facilities, infrastructure and improvements (including City-Owned Utility Infrastructure and Electric Power Infrastructure) which are necessary to develop, use and operate all planned Improvements on the Spring Training Facilities Site; and (vi) address all Site Conditions. Notwithstanding the foregoing, the Parties acknowledge and agree preparation of the Site Master Plan is not intended to supersede or override any requirement under Applicable Laws for City or other Governmental Approvals for the ultimate improvement, development and use of the Spring Training Facilities Site as contemplated by this Agreement and the Site Master Plan including all required Zoning, subdivision and site plan approvals.

5.3 Project Schedule. The City, diligently and subject to the review and recommendations of the Project Committee, shall prepare a schedule that identifies all major milestones of the Project (the “**Project Schedule**”) including (i) the procurement of key Project Personnel, (ii) the commencement and completion dates for all necessary Studies, Assessments, Surveys and Reports, Surveys and Master Plans; (iii) the commencement and completion of the Spring Training Facilities Design Specifications and the Spring Training Facilities Plans, together with the plans and specifications for the other Improvements contemplated by this Agreement, (iv) the commencement and completion dates for the submittal and issuance of all required Governmental Approvals, (iv) the commencement and completion of site and other preparatory work, (v) the Commencement of Construction, and (vi) the Completion of the Spring Training Facilities and other Improvements contemplated by this Agreement (each of the foregoing referred to herein as a “**Milestone**”).

5.3.1 The City shall, diligently and subject to the review and recommendations of the Project Committee, refine and update the Project Schedule, no less frequently than monthly, to reflect the actual status of all included Milestones, provided the extension of the time for performance of any Milestone (except as provided for in the event of Enforced Delay) shall be subject to the reasonable approval of Cubs.

5.3.2 Without limitation of the foregoing, the City acknowledges Cubs are entering into this Agreement in reliance on the City’s commitment to timely (a) fund all costs comprising the Financing Amount, as well as any other sums the City is obligated to pay under this Agreement, including but not limited to as referenced in Sections 3.2 and 3.3, and to perform all obligations of the City as set

forth in this Agreement, in each instance on or before the date by which such funds or performance is required to cause the timely payment and performance of all Milestones, and (b) pay and perform the City's obligations described in the Facilities Use Agreement.

5.3.3 Without limitation of the foregoing, Cubs acknowledge the City is entering into this Agreement, and committing to spend the Financing Amount and the amounts required to complete the Additional City Obligations, in reliance on Cubs' commitment to timely (a) pay all sums Cubs is obligated to pay under this Agreement, including but not limited to as referenced in Section 3.2, and to perform all obligations of Cubs as set forth in this Agreement, in each instance on or before the date by which such funds or performance is required to cause the timely payment and performance of all Milestones, and (b) pay and perform Cubs' obligations described in the Facilities Use Agreement.

5.4 **Project Personnel.**

5.4.1 As reflected in the Project Schedule, the procurement process to select the principal Project Personnel for the Spring Training Facilities, the owner's representative (if applicable), architect, general contractor and engineering firm, shall be initiated on or before the 10th day following execution of this Agreement. The services of all Project Personnel, including the architect and general contractor, shall be procured in accordance with Applicable Laws, provided, upon the recommendation of the Project Committee, the City may use construction-manager-at-risk or other alternative procurement methods approved by Cubs and authorized under Applicable Laws. Without limitation of the foregoing, the Parties acknowledge and agree the design and construction of the Spring Training Facilities requires specialized qualifications and substantial experience in the design and construction of comparable facilities and projects and, accordingly, Cubs shall reasonably approve, prior to publication, all requests for qualification and/or requests for proposal including, without limitation, the minimum qualifications of the respondents and Cubs shall be present for all interviews and meetings with potential Project Personnel and, during the Term, meetings and discussions with any Project Personnel.

5.4.2 Once construction commences, the Project Manager shall be the sole party dealing with the contractor on behalf of the Project Committee. The Project Manager shall be an employee of the City, as selected by the City Manager; and the Project Manager shall visit the site daily on days when construction and related activity is conducted. Cubs shall also appoint a site representative ("**Cubs' Site Representative**") who shall visit the site daily on days when construction and related activity is conducted. The Project Manager and Cubs' Site Representative shall use reasonable efforts to confer and review progress of the Project daily. Notwithstanding anything in this Section 5.4.2 to the contrary, (a) any communication to or from the Project Manager coming from the contractor, the architect or the Project Committee, shall also be given concurrently to Cubs' Site Representative; (b) Cubs' Site Representative may communicate with the contractor in connection with the Project, but only the Project Manager is authorized to direct the contractor pursuant to the contractor's agreement with the City; and (c) the Project Manager and Cubs' Site Representative are required to agree on all actions undertaken or decisions made at the site, including any change orders that such parties are authorized by the Project Committee to approve. In the event that the Project Manager and Cubs' Site Representative are unable to agree on an action, such matter shall be referred promptly to the Project Committee for resolution in accordance with this Agreement. The Project Committee may (but is not obligated) to prepare or approve a "project manual" to facilitate decisions made by the Project Manager and Cubs' Site Representative; but in any event the Project Committee shall prepare a schedule of changes (e.g., cost, programming, scope, scheduling, etc.) that require approval by the Project Committee and execution by authorized representatives of the City and Cubs.

5.4.3 Cubs is a named third-party beneficiary with right of enforcement of the Project design and construction contracts between the City and, respectively, the “CM@R” and the “Design Professional,” as named in the design and construction contracts.

5.5 **Project Budget.** Promptly following the selection of the principal Project Personnel for the Spring Training Facilities Project, the architect, general contractor or other responsible party as identified by the Project Committee, in consultation with the principal engineering firm and Project Committee, shall prepare and the Project Committee shall consider for approval, a line-item budget for the Spring Training Facilities Project, Public Parking and other Improvements contemplated by this Agreement. Such budget shall identify, in separate sections and line items, each cost item which the Parties agree is, in whole or in part, to be paid from the Financing Amount or as Additional City Obligations (the “**Project Budget**”). Thereafter, the Project Budget shall be updated, and the Project Committee shall review and make recommendations concerning such updates, no less frequently than monthly, provided the Project Budget shall be automatically adjusted to account for (i) any modifications or supplements to the Spring Training Facilities, as referenced in Section 2.4, and (ii) any modification of any line item which includes a cost item which the Parties have agreed is eligible to be paid from the Financing Amount (or is an Additional City Obligation, if applicable to such cost item); and (iii) actual costs as incurred or contracted, when approved by the Project Committee. Without limitation of the foregoing, Cubs shall approve (with such approval not unreasonably to be withheld, conditioned or delayed), prior to implementation, any material change in any Project Budget line item which, if implemented, would directly or indirectly increase the portion of the cost of the Spring Training Facilities which is funded from the Financing Amount.

5.6 **Project Design.** As referenced above, the Project Committee shall solicit detailed input from Cubs and other relevant sources concerning all aspects of the design of and specifications for the Spring Training Facilities including: (i) the Spring Training Facilities Design Specifications, including the layout of the Spring Training Facilities and all specifications for the features, amenities and other elements required to meet the standards prescribed by this Agreement and any material modification to such Spring Training Facilities Design Specifications (which Cubs shall reasonably approve prior to implementation), and (ii) the Spring Training Facilities Plans including all plans for the features, amenities and other elements required to meet the standards prescribed by this Agreement and any material modification to such Spring Training Facilities Plans (which Cubs shall have the right to approve or reject prior to implementation). Notwithstanding anything in this Agreement to the contrary, the Project Committee shall require the Stadium to include a suite for the City’s use that will accommodate not less than thirty (30) persons.

5.7 **Regular Meetings; Dissolution.** The Project Committee will meet as needed at the City’s offices or by telephone if requested by Cubs, at such intervals as may be reasonably agreed by the City and Cubs, until the initial Completion and Acceptance of Possession of the Spring Training Facilities and Completion of the other Improvements contemplated by this Agreement; provided, one hundred twenty (120) days following Acceptance of Possession, the Project Committee shall be dissolved without further act by or of, or notice from or to, the Parties required.

5.8 **Signage.**

5.8.1 **Signs on Spring Training Facilities Site.** Subject to Applicable Laws, Cubs shall have exclusive control of all signage on or within the Stadium Site which faces into the Stadium and is not visible from any public right-of-way. For purposes of this provision, a sign shall not be deemed to be visible from the public right-of-way if its primary audience is inside the Stadium and visibility from a public right-of-way is incidental and unintentional. The cost of all signs on the Stadium Site shall be included in the Financing Amount. The City shall not permit any Third Party signs at the Stadium Site or

Team Facilities Site at any time, or at the City Fields Site at any time except signage which faces into the City Fields Site and is not visible from any public right-of-way, or at the City Fields Site at any time during periods of Cubs' use as described in the Facilities Use Agreement, unless, in each such instance, approved in writing in advance by Cubs. For purposes of this provision, a sign shall not be deemed to be visible from the public right-of-way if its primary audience is inside the City Fields, and visibility from a public right-of-way is incidental and unintentional. Other signs within the Spring Training Facilities Site shall be in accordance with the Comprehensive Sign Plan.

5.8.2 Comprehensive Sign Plan. The City staff shall work, diligently and in good faith, with Cubs to create a mutually-agreed comprehensive sign plan for the City Site (including the Spring Training Facilities Site), as provided for in this Section ("**Comprehensive Sign Plan**"), to address the signage needs of the Spring Training Facilities, including the preparation and presentation to the City Council of the Comprehensive Sign Plan and any amendments to City ordinances, rules or regulations which are necessary to authorize implementation of the Comprehensive Sign Plan. It shall be a condition to the obligations of Cubs and the City under this Agreement for the Comprehensive Sign Plan to be adopted and other final City action taken to establish the signage restrictions and rights described in Section 5.8.1 and this Section 5.8.2 not later than one hundred and twenty (120) days after submission of Cubs' application to the City for the Comprehensive Sign Plan.

5.8.3 No Signage on Wastewater Treatment Facility. The City, during the Term of this Agreement and the Facilities Use Agreement, will not install or permit signs on the City's Northwest Wastewater Treatment Facility located adjacent to the Spring Training Facilities Site, which signs face or are visible from the interior of the Stadium unless otherwise agreed by the Parties.

5.8.4 Street Naming. Subject to compliance with Applicable Laws, the City shall cooperate with Cubs to allow Cubs to name all streets, roadways and pedestrian thoroughfares within the Spring Training Facilities Site including any new streets, roadways and pedestrian thoroughfares, which naming shall be through the term of the Facilities Use Agreement. Notwithstanding the foregoing, Cubs shall not have the right to change the name of Riverview Drive, or to name the Connection Path (as depicted on Exhibit "C"); provided, however, the City shall not name the Connection Path after a Third Party without Cubs' consent.

5.9 Americans with Disabilities Act. Without limitation of any other term or condition of this Agreement, it is intended by the Parties the Spring Training Facilities will be constructed in compliance with the Americans with Disabilities Act of 1990 ("**ADA**"), including any applicable ADA Standards for Accessible Design, and specifically, without limiting the foregoing, the 2010 ADA Standards for Accessible Design as published in the Federal Register September 15, 2010, and all such compliance shall be included within the Financing Amount (or the Additional Cost Cap, if compliance is required with respect to a matter constituting an Additional City Obligation). Following Completion and Acceptance of Possession of the Spring Training Facilities, any structural changes required for compliance with the ADA, whether as a result of changes in ADA rules, regulations, interpretations or otherwise, shall constitute Capital Improvements.

5.10 Project Construction.

5.10.1 Project Schedule. The City will use persistent and steadily applied efforts to cause the Commencement of Construction to occur on or before the Outside Commencement Date, and thereafter will diligently pursue and prosecute construction of the Spring Training Facilities and Public Parking in accordance with the applicable Milestone Dates specified in the Project Schedule. In the event Commencement of Construction of the Spring Training Facilities and Public Parking has not occurred by the Outside Commencement Date, the Parties promptly thereafter shall meet and confer in good faith to

attempt to resolve those matters that have delayed the Commencement of Construction and to determine whether the Spring Training Facilities and other Improvements can be Completed in a manner consistent with the Project Budget, Project Schedule and the schedules and expectations of the Parties (a “**Resolution**”). If the Parties are unable, in good faith and within ninety (90) days following the Outside Commencement Date, to achieve Resolution and amend this Agreement accordingly, then this Agreement shall be terminated, and neither Party shall have any rights with respect to the other or in connection with or arising out of this Agreement; provided, however, the continuing rights of Cubs as referenced in Section 14 of this Agreement shall continue in full force and effect and survive the termination of this Agreement.

5.10.2 **Enforced Delay in Performance for Causes Beyond Control of Party.**

Whether stated or not, subject to the exclusions set forth below, all periods of time in this Agreement are subject to this Section 5.10.2 and (as applicable) the Cure Periods referenced in Section 10.1. Subject to the foregoing, neither the City nor Cubs, as the case may be, shall be considered in Default under this Agreement in the event of a delay due to causes beyond its control and without such Party’s fault, failure to comply with Applicable Laws or negligence (an “**Enforced Delay**”), including but not limited to: (1) acts of God, acts of a public enemy, acts of terrorism, fires, floods, unusually severe weather, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, acts of the federal or state government and acts of Third Parties (including contractors, subcontractors, and suppliers) beyond the reasonable control of the Party; and (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (including the effect of petitions for initiative or referendum), but only to the extent described in Section 12 below. Notwithstanding the foregoing or anything in this Agreement to the contrary, Enforced Delay shall not include any delay in performance due to (i) economic conditions; (ii) financial infirmity or financial decisions made by Cubs, including the failure to make timely payment of any amount required to be paid by Cubs pursuant to this Agreement; (iii) financial infirmity or financial decisions made by the City, including without limitation the City’s failure to sell bonds or otherwise pay the Financing Amount and other amounts necessary to perform the City’s obligations as required by this Agreement; (iv) any act that constitutes a Default of the Party seeking the benefit of an Enforced Delay; (v) any single event of the nature described in subpart (1) above that delays Completion of Construction by more than one (1) year; (vi) Commencement of Construction of the Project not occurring by the Outside Commencement Date and the Parties thereafter failing to achieve Resolution within the time periods set forth in Section 5.10.1, which shall control; (vii) a change in City Regulations as described in Section 13.1, which shall control; (viii) the time for submission and approval of the Comprehensive Sign Plan as set forth in Section 5.8.2; or (ix) the failure of the Parties to agree within the time limitations set forth in Section 3.2.6 with respect to the remediation of an Excluded Condition. In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay, provided the Party seeking the benefit of the provisions of this Section 5.10.2 shall, reasonably promptly after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

5.11 **Acceptance of Possession.** Upon receipt of notice from the City to Cubs that the Spring Training Facilities and all other Improvements contemplated by this Agreement, including without limitation Public Parking, are Complete (“**Completion Notice**”), the City and Cubs shall schedule a formal inspection and walk-through, on behalf of Cubs, of the Spring Training Facilities and such Improvements within thirty (30) days of Cubs’ receipt of the Completion Notice (“**Inspection**”). Within twenty-one (21) days of the Inspection, Cubs shall deliver to City a summary of any defects or other matters which Cubs believe require correction or modification for the Spring Training Facilities and other such Improvements, or applicable portion thereof to conform to the approved plans and specifications therefore and/or the requirements of this Agreement (“**Correction Notice**”). Within twenty-one (21) days

of the City's receipt of the Correction Notice, the Parties shall meet and confer to confirm which matters contained in the Correction Notice the Parties agree require correction or modification. If the Parties fail to mutually agree concerning any matter specified in the Correction Notice within twenty-one (21) days of such meeting, then either Party may refer the dispute to the dispute resolution process specified in Section 7. Completion of all corrections and modifications identified in the Correction Notice and/or, if applicable, all corrections and modifications required pursuant to an Order shall be paid from the Financing Amount unless such cost items are the responsibility of City or Cubs pursuant to another provision of this Agreement. Upon Completion of all material corrections and modifications identified in the Correction Notice and/or, if applicable, all material corrections and modifications required pursuant to an Order, Cubs shall accept possession of the Spring Training Facilities ("**Acceptance of Possession**").

6. Conditions to the Obligations of the Parties.

6.1 Cubs' Conditions. Cubs may terminate this Agreement (whereupon the continuing rights of Cubs as referenced in Section 14 shall continue in full force and effect) upon written notice to the City, at any time in the event of any of the following:

6.1.1 Failure to Meet Outside Commencement Date. The failure of the Parties, following Commencement of Construction not occurring by the Outside Commencement Date, to achieve Resolution as provided in and subject to the provisions of Section 5.10.1.

6.1.2 Milestones. If any Milestone set forth in the Project Schedule is not timely funded or performed, and such failure constitutes a Default by the City hereunder.

6.1.3 Referendum. As provided in and subject to the express provisions of Section Error! Reference source not found.

6.1.4 Other Litigation. As provided in and subject to the express provisions of Section Error! Reference source not found.

6.1.5 Change in City Regulations. As provided in and subject to the express provisions of Section 13.1.

6.1.6 Adoption of Comprehensive Sign Plan. The City Council of the City (and/or, if applicable, any other City or governmental body with jurisdiction over the Comprehensive Sign Plan) has not finally approved the Comprehensive Sign Plan, and any related ordinances, regulations, instruments and agreements, through all required City action within one hundred and twenty (120) days of submission of all required applications and other materials, provided however Cubs shall promptly submit all applications and other submissions required in connection with the Comprehensive Sign Plan following approval, execution and delivery of this Agreement by the City.

6.1.7 Default by City. As provided in and subject to the express provisions of Section 11.

6.1.8 Excluded Exception or Excluded Condition. The City fails to resolve or remove any Excluded Exception or the Parties fail to provide for the remediation of an Excluded Condition that causes the cost of construction of the Spring Training Facilities to exceed the Financing Amount as provided in and subject to the express provisions of Section 3.2.6.

6.2 City's Conditions. The City may terminate this Agreement, upon written notice to Cubs, at any time in the event of any of the following:

6.2.1 **Failure to Meet Outside Commencement Date.** The failure of the Parties, following Commencement of Construction not occurring by the Outside Commencement Date, to achieve Resolution as provided in and subject to the provisions of Section 5.10.1.

6.2.2 **Milestones.** If any Milestone set forth in the Project Schedule is not timely funded or performed, and such failure constitutes a Default by Cubs hereunder.

6.2.3 **Referendum.** As provided in and subject to the express provisions of Section Error! Reference source not found.

6.2.4 **Other Litigation.** As provided in and subject to the express provisions of Section Error! Reference source not found.

6.2.5 **Default by Cubs.** Subject in any event to Section 11, at any time prior to the initial Completion and, where applicable, Acceptance of Possession of the Spring Training Facilities Project and Public Parking, Cubs fail to timely fund or cause to be paid any costs which Cubs are obligated to pay under this Agreement in respect of the Spring Training Facilities Project, or (subject to Enforced Delay, if applicable) is in Default of any other obligation of Cubs arising under this Agreement.

6.2.6 **Excluded Condition.** The Parties fail to provide for the remediation of an Excluded Condition that causes the cost of construction of the Spring Training Facilities to exceed the Financing Amount as provided in and subject to the express provisions of Section 3.2.6.

7. **Resolution Process.** If either Party objects to, or wishes to contest, any action or decision of the other Party relating to the Project or the obligations of the Parties pursuant to this Agreement, such Party may invoke the provisions of this Section and provide notice to the other Party (“**Objection Notice**”). If a Party provides an Objection Notice to the other Party under this Section or the process provided for in this Section is invoked pursuant to other express provisions of this Agreement, then within three business days of the receipt of such Objection Notice (or other notice) by the receiving Party, as applicable, representatives of the City and Cubs shall meet, telephonically or in person, in an effort to resolve such objection in accordance with the issue resolution ladder attached as Exhibit F-1. If such objection has not been resolved to the satisfaction of the City and Cubs at the conclusion of the issue resolution ladder process, then either Party may invoke the dispute resolution process set forth in Exhibit F-2 attached hereto, by written notice to the other Party.

8. **Risk of Loss; Liability Coverage.** At all times prior to the Completion and Acceptance of Possession of the Spring Training Facilities and other Improvements contemplated by this Agreement, and acceptance of the same (as applicable) by Cubs, the City shall bear all risk of loss, provided the City shall also provide and keep in force comprehensive insurance policies, with such cost being included in the Financing Amount, at no cost to Cubs, against claims for injuries to persons and damages to property based upon or arising out of the City’s or Cubs’ performance of the rights and obligations of the City and Cubs under this Agreement in accordance with the insurance requirements set forth in Exhibit G attached hereto, naming Cubs as an additional insured on all such policies. Such insurance may be provided through self-insurance by a duly created municipal insurance trust authority created in accordance with Applicable Laws, provided the City is prepared to expend such funds as may be necessary to meet the requirements of this Agreement and City is duly authorized and has the financial capacity to self-insure for such purposes. A certificate which evidences proof of such coverage shall be provided to Cubs starting on the Commencement Date and thereafter at least thirty (30) days prior to each annual anniversary of the Commencement Date. If the City transfers ownership of any of the Spring Training Facilities to a municipal corporation, the City shall provide the same insurance coverage on behalf of such corporation. Notwithstanding anything to the contrary herein, the provisions of this Section 8 shall

survive termination of this Agreement with respect to all rights and obligations of the Parties arising hereunder prior to such termination.

9. Representations and Warranties.

9.1 City Representations. The City represents and warrants to Cubs, acknowledging and agreeing Cubs are entering into this Agreement in reliance on such representations and warranties:

9.1.1 The City's execution and approval of this Agreement, and the financing hereof, have been and shall be in compliance with the procedural and general requirements of the City Charter and the City Code and the Mesa 2025 general operating and master plans.

9.1.2 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

9.1.3 As of the date of this Agreement, the City knows of no allegation, claim, litigation, proceeding, initiative, referendum or official investigation contesting the powers of the City or its officials with respect to this Agreement including the City's execution, delivery and performance hereof.

9.1.4 The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

9.1.5 The City has identified the sources and means by which the City will generate the monies, and such sources and means are sufficient, to fully fund the City's payment obligations under this Agreement.

9.1.6 The City has all necessary authority and power to implement the Site Master Plan and utilize the Spring Training Facilities Site for the purposes contemplated by this Agreement and to implement the City's plan of finance for Project and to pay and perform all obligations of the City under this Agreement.

9.1.7 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9.1.8 The City has no actual or constructive knowledge of any Excluded Exception which has not been disclosed to Cubs and, except as approved by Cubs in writing, will cause each Excluded Exception to be resolved or removed at its sole cost and expense.

9.1.9 The City has no actual or constructive knowledge of any Excluded Condition which has not been disclosed to Cubs and, except as approved by Cubs in writing, will cause each Excluded Condition to be resolved or removed at its sole cost and expense.

For the purposes of this Section 9.1, the "knowledge" of the City shall be deemed to refer only to the knowledge (whether actual or constructive, as applicable) of the City Manager as of the Effective Date and solely in his or her capacity as the City Manager including in no event shall he or she be personally liable for any representation or warranty contained herein.

9.2 Cubs Representations. Cubs represents and warrants to the City, acknowledging and agreeing the City is entering into this Agreement in reliance on such representations and warranties:

9.2.1 Cubs is the sole equity owner of the Team (and all related assets) and is the sole holder of all operating and franchise rights with respect to the Team, subject to the rights of Major League Baseball and its related entities and affiliates.

9.2.2 Cubs' execution and approval of this Agreement is in compliance with the (Parcels 3.303 and 3.304)organizational/formation and operating documents of Cubs.

9.2.3 Cubs will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

9.2.4 As of the date of this Agreement, Cubs knows of no litigation, proceeding or official investigation contesting the powers of Cubs or its officers with respect to this Agreement including Cubs' execution, delivery and performance hereof.

9.2.5 The execution, delivery and performance of this Agreement by Cubs is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Cubs is a party or is otherwise subject.

9.2.6 Cubs has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

9.2.7 Cubs has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

For the purposes of this Section 9.2, the "knowledge" of Cubs shall be deemed to refer only to the knowledge (whether actual or constructive, as applicable) of the General Counsel of Cubs as of the Effective Date and solely in his or her capacity as such officer of Cubs including in no event shall he or she be personally liable for any representation or warranty contained herein.

10. **Default and Remedies.**

10.1 **Default and Cure Period.** If the City or Cubs fails to perform its or their obligations under this Agreement or any other contract or agreement between the City and Cubs (including but not limited to the Facilities Use Agreement), and such failure continues for a period of thirty (30) days after notice thereof from the other Party in accordance with this Agreement (the "**Cure Period**"), such failure shall constitute a default under this Agreement (a "**Default**"). Notwithstanding the foregoing, if such Default is a non-monetary Default and more than thirty (30) days would reasonably be required to perform such action or otherwise comply with this Agreement, the Cure Period may be extended by such additional time as may be reasonably necessary for the Party in Default (the "**Defaulting Party**") to cure such Default, but not exceeding an additional one hundred and twenty (120) days, provided the Defaulting Party commences performance or compliance within the initial Cure Period and thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of the Defaulting Party. Any notice of an alleged Default ("**Default Notice**") shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within the Cure Period (as extended, if applicable), the non-Defaulting Party shall have the remedies set forth in Section 10.2.

10.2 **Remedies.** Whenever a Default occurs and is not cured within the Cure Period (as extended, if applicable), the remedies of the non-Defaulting Party shall consist of and be limited to the following except as provided in Section 11:

10.2.1 The recovery of the non-Defaulting Party's actual damages as of the time of entry of judgment, the Parties expressly waiving any right to seek consequential, punitive, multiple, exemplary or other damages, of any kind or nature, except actual damages, provided, upon a payment Default, the non-Defaulting Party shall be entitled to interest on such payment amount at the Default Rate from the date of Default until paid in full. Without limitation of the foregoing, if the City is in Default in timely funding the Financing Amount or payment of the other amounts payable by the City pursuant to this Agreement prior to the initial Completion and Acceptance of Possession of the Spring Training Facilities and Cubs elect to terminate this Agreement pursuant to Section 11, then and in such event, Cubs shall be entitled to collect from the City, as liquidated damages and not as a penalty, an amount equal to all amounts paid by Cubs pursuant to Section 4.1 in connection with the construction and Completion of the Spring Training Facilities Project, with interest on such amounts at the rate of interest paid by the City with respect to City bonds during the period from the date each such cost was incurred until paid in full.

10.2.2 In such event, it is an appropriate remedy, and the non-Defaulting Party may seek specific performance, an injunction (whether characterized as mandamus, injunction or otherwise), special action, declaratory relief or other similar relief requiring the Defaulting Party to undertake and to fully and timely pay or perform its obligations under this Agreement. Without limitation of the foregoing, it is an appropriate remedy, and Cubs may seek specific performance, an injunction, special action, declaratory relief or other similar relief in the event of the City's failure to pay or disburse amounts due and payable to Third Parties, including any Project Personnel, under any agreement or contract entered into or awarded for or relating to the Spring Training Facilities and other Improvements contemplated by this Agreement. All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy. Without limitation of the foregoing, the provisions of this Section 10 shall survive termination of this Agreement.

11. **Termination Upon Default.** In addition to the remedies provided in Section 10.2, upon a final adjudication or, if applicable, final determination under the dispute resolution process provided in this Agreement that a Default by a Party has occurred and such Default is not cured within a period following such final adjudication or determination equal to the Cure Period (as extended, if applicable), then the non-Defaulting Party may provide notice ("**Pre-Termination Notice**") to the Defaulting Party of the non-Defaulting Party's intention to terminate this Agreement and the Facilities Use Agreement, and specifying the manner in which the Default may be satisfactorily cured. In such event, within ten (10) business days of the Defaulting Party's receipt of such Pre-Termination Notice, the Mayor of the City and the Chairman of Cubs shall meet, telephonically or in person, in an effort to resolve such Default to the satisfaction of the Parties. If such Default is not resolved within sixty (60) days after the Defaulting Party's receipt of the Pre-Termination Notice, then the non-Defaulting Party shall have the right to terminate this Agreement and the Facilities Use Agreement by providing written notice to the non-Defaulting Party ("**Termination Notice**"), whereupon this Agreement and the Facilities Use Agreement shall terminate, provided such termination shall not act to release the Defaulting Party from any of its payment or performance obligations in respect of the matter which is the subject of the Default, which obligations shall expressly survive termination of this Agreement pursuant to this Section 11.

12. **Referendum or Legal Challenge.**

12.1 In the event of a referendum petition being timely filed with the Clerk of the City with respect to the adoption of this Agreement or the Facilities Use Agreement by the City Council, the City at

its sole cost and expense, shall schedule such referendum election for the next regular election of the City, or, in the City's sole and absolute discretion, as a special election; and the time period prior to the election and until the final results of such election are known shall be deemed an Enforced Delay pursuant to Section 5.10.2 of this Agreement. In the event the electors of the City disapprove the adoption of this Agreement or the Facilities Use Agreement, then this Agreement shall automatically, and without further act or notice, be deemed terminated.

12.2 Upon the filing by a Third Party of any action at law or in equity or the assertion of any claim, cause of action or judicial or non-judicial proceeding relating or pertaining, directly or indirectly, to this Agreement (except a referendum as described in Section Error! Reference source not found.), the Parties shall cause such action or proceeding to be timely defended by counsel selected by and acceptable to the Parties in their reasonable discretion and the Parties shall equally bear the cost of such defense. Upon mutual agreement of the Parties, and only if permitted by the applicable bond conditions, these costs may be deducted from the Financing Amount. Either Party may, in its sole discretion, select its own counsel to represent its interests, at its own cost and expense. The Parties shall fully cooperate in the defense of such action or proceeding. In the event the City and Cubs prevail at the trial level and the Third Party appeals the judgment, then the City and Cubs shall equally bear the cost of the appeal to the Court of Appeals. If the cause is thereafter appealed to the Supreme Court of the State of Arizona, then the City and Cubs shall bear the cost of such appeal only upon the mutual agreement of the City and Cubs; provided however either the City or Cubs may elect (at its sole cost and expense) to prosecute or defend such appeal to the Supreme Court of the State of Arizona. In the event the City and Cubs do not prevail at the trial level, then the City and Cubs shall appeal the judgment to the Court of Appeals only upon mutual agreement of the City and Cubs, provided however either the City or Cubs may elect (at its sole cost and expense) to appeal the judgment to the Court of Appeals or (if applicable) to the Supreme Court of the State of Arizona. Notwithstanding anything in this Section Error! Reference source not found. to the contrary, the Parties must mutually agree on all strategic decisions and each Party shall approve (with such approval not unreasonably to be withheld, conditioned or delayed) all filings in any level of legal proceeding related to the Project or this Agreement. If the Parties do not agree, then either Party may terminate this Agreement upon written notice to the other; provided, however, each Party shall act reasonably in cooperating with the other in an effort to reach agreement. In addition to and also notwithstanding the foregoing, in the event litigation or other proceeding results in a delay of construction by more than twenty-four (24) months, then (and notwithstanding the provisions of Section 5.10.2) either Party may terminate this Agreement upon written notice to the other.

13. Changes in City Regulations or Applicable Laws.

13.1 **City Regulations.** If the payment or performance of any material term or condition of this Agreement, in the manner and at the times provided for in this Agreement, is prevented or materially impaired and Cubs cannot realize the practical benefits intended to be conferred by this Agreement due to a change in City Regulations: (i) prior to the initial Completion and Acceptance of Possession of the Spring Training Facilities, Cubs may elect to terminate this Agreement by notice to the City; or (ii) following the initial Completion and Acceptance of Possession of the Spring Training Facilities, Cubs may provide notice ("**Pre-Termination Notice (Change in Law)**") to the City of Cubs' intention to terminate this Agreement. In such latter event, within ten (10) business days of the City's receipt of such Pre-Termination Notice (Change in Law), the Mayor of the City and the Chairman of Cubs shall meet, telephonically or in person, to determine whether the change in City Regulations can be addressed to the reasonable satisfaction of Cubs, through amendment of this Agreement or otherwise. If such change in City Regulations cannot be resolved to the reasonable satisfaction of Cubs within sixty (60) days after the Pre-Termination Notice (Change in Law), the City shall have the right to refer the matter to the dispute resolution process specified in Section 7, by providing notice to Cubs ("**Termination Notice (Change in Law)**"), for a determination of whether, in light of such change in City Regulations, Cubs can still obtain

the practical realization of the benefits intended to be conferred on Cubs by this Agreement. In the event of a final determination that Cubs cannot obtain the practical realization of the benefits intended to be conferred on Cubs by this Agreement as a result of the change in City Regulations, this Agreement shall terminate and the Parties shall have no further rights or obligations hereunder and the City shall reimburse Cubs for any amounts paid by Cubs pursuant to Section 4.1 in connection with the construction and Completion of the Project. Without limitation of the foregoing, the provisions of this Section 13.1 shall survive termination of this Agreement.

13.2 Applicable Laws. The Parties shall equally bear the risk of changes in or to Applicable Laws (other than City Regulations) during the Term, and changes in or to Applicable Laws (other than City Regulations) during the Term shall not be a Default of either Party under the terms of this Agreement or provide a basis for terminating this Agreement. Notwithstanding and without limitation of the foregoing, the Parties covenant and agree to cooperate in all reasonable measures undertaken, to oppose any such change in Applicable Laws. It shall be a material breach of the Agreement by a Party for such Party either not to comply with this provision or to advocate against any such proposed change in Applicable Law.

14. Use of HoHoKam Stadium and Fitch Park.

14.1 Continued Use of HoHoKam and Fitch Park. Until the Completion and Acceptance of Possession of the Spring Training Facilities, Cubs shall continue to use HoHoKam Stadium and Fitch Park for Spring Training activities in accordance with the Lease Agreement; provided, however, if Commencement of Construction of the Improvements has not occurred by the Outside Commencement Date and the Parties have failed to achieve Resolution as provided in Section 5.10.1, or if Completion of any Improvement which is the subject of this Agreement is not being diligently prosecuted, the term of the Lease Agreement shall thereupon automatically be extended to April 1, 2025 (with termination permitted by Cubs at any time and without cost or penalty on 364 days' prior written notice, which notice may be given at any time before or after July 1, 2013), but all other terms and conditions of Lease Agreement shall continue in full force and effect. Without limitation of the foregoing, the provisions of this Section 14.1 shall survive termination of this Agreement.

14.2 Following Early Termination. Notwithstanding the provisions of Section 14.1, if this Agreement is terminated upon the occurrence of any of the events, in accordance with the applicable provisions, referenced in Section 6.1, Cubs may provide written notice to the City, no later than thirty (30) days following such termination, of Cubs' election to conduct Spring Training at HoHoKam Stadium and Fitch Park for a duration specified by Cubs, provided Cubs' failure to timely provide notice to the City of its election under this Section 14.2 shall be deemed to constitute Cubs' election to conduct Spring Training at HoHoKam Stadium and Fitch Park through the 2025 Spring Training Season. In such event, Cubs' possession and use of HoHoKam Stadium and Fitch Park shall be terminable at any time, with no cost or penalty to Cubs, on 364 days' prior notice from Cubs to the City. During any such continuation period, all other terms and conditions of the Lease Agreement shall continue in full force and effect. Without limitation of the foregoing, the provisions of this Section 14.2 shall survive termination of this Agreement.

15. **Term; Recording Notice of Termination.** The term of this Agreement (“**Term**”) will commence upon the Effective Date and, unless earlier terminated in accordance with the terms and conditions set forth in this Agreement, shall expire on the date which is one (1) year after Acceptance of Possession. In the event this Agreement is lawfully terminated by either Party in accordance with any of its terms or provisions, or upon expiration of the Term, the City may record a notice of termination in the Official Records of Maricopa County.

16. **Notices and Filings.**

16.1 **Manner of Service.** Except as otherwise required by Applicable Laws, all notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national “overnight” courier service (such as UPS or FedEx), or by United States certified mail (return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To the City:	City of Mesa 20 East Main Street Mesa, Arizona 85211 Attention: City Manager
Copy to:	City of Mesa 20 East Main Street Mesa, Arizona 85211 Attention: City Attorney
Copy to:	Mariscal, Weeks, McIntyre & Friedlander, P.A. 2901 North Central Avenue, Suite 200 Phoenix, Arizona 85012 Attention: James Patterson, Esq.
To Cubs:	Chicago Cubs Baseball Club, LLC 1060 West Addison Chicago, Illinois 60613 Attention: Office of the President
Copy to:	Chicago Cubs Baseball Club, LLC 1060 West Addison Chicago, Illinois 60613 Attention: Office of the General Counsel
Copy to:	Greenberg Traurig, LP 2375 East Camelback Road, Suite 700 Phoenix, Arizona 85016 Attention: Rebecca L. Burnham, Esq.

Messages delivered electronically (e.g., e-mail) shall not be effective for any purpose.

16.2 **Effective Date of Notices.** No such notice, demand or other communication will be deemed effective absent documented confirmation in commercially acceptable form and, in such event, such notice, demand or other communication shall be deemed effective: (i) if delivered personally or delivered through a same day delivery/courier service, upon the date of such confirmation of delivery or

refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above, upon actual receipt, and (iii) if delivered by a recognized national overnight delivery service, the date of such confirmation of delivery; in each case except delivery by U.S. Mail regardless of whether such notice, demand or other communication is actually received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Article 16. Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided if such payment is made in any manner described in the preceding sentence, such payment shall be deemed made at the time provided in this Section for notices, demands and other communications to be deemed effective.

17. General Provisions.

17.1 Recordation. This Agreement shall be recorded in its entirety by the City in the office of the Maricopa County, Arizona, Recorder, not later than ten (10) days after this Agreement has been executed by the City and Cubs.

17.2 Designated Representatives. Whenever a term or condition of this Agreement refers to a “designated representative” of a Party, such reference shall be to the representative designated for such purpose in a notice by a Party to the other Party; provided if no such designation has occurred or if such designated representative is no longer employed by the Party or otherwise available, the “designated representative” for the City shall be deemed to be its City Manager and for Cubs its General Counsel.

17.3 Persons Not Liable. No shareholder, partner, member, manager, director, officer, official, council member, representative, agent, attorney or employee of either Party shall be personally liable to the other Party, or to any successor in interest to the other Party, in the event of any Default by a Party or for any amount which may become due to the other Party or any successor or assign, or with respect to any obligation of the City or Cubs under the terms of this Agreement.

17.4 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

17.5 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

17.6 Status Statements. Any Party (the “**Requesting Party**”) may (as may be reasonably required by such Requesting Party) from time to time, deliver written notice to any other Party requesting such other Party (the “**Providing Party**”) provide in writing, to the knowledge of the Providing Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified, and if so amended, identifying the amendments, (c) the Requesting Party is not in Default in the performance of its obligations under this Agreement, or, if in Default, to describe therein the nature and amount of any such Default, and (d) any other matter reasonably requested (a “**Status Statement**”). A Party receiving a request hereunder shall execute and return such Status Statement within thirty (30) days following the receipt thereof. The City Manager (or the City Manager’s

designee) shall have the right to execute for or on behalf of the City, any Status Statement requested by Cubs hereunder. The City acknowledges a Status Statement hereunder may be relied upon by a Mortgagee, provided however the City shall have no liability for monetary damages suffered by Cubs, or any Mortgagee, or to any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by the City.

17.7 Rights of Lenders. Notwithstanding any other provision hereof:

17.7.1 Cubs may convey, pledge, encumber, grant security interests in, or otherwise transfer, by deed of trust, mortgage, collateral assignment, security agreement, or similar instrument (each a “Mortgage”), all or any portion of its interest in and to any of its right, title and interests under this Agreement in favor of a single lender (or group of participating lenders) solely in connection with the encumbering of all or substantially all of the Team’s assets in favor of such single lender (or group of participating lenders) (collectively, “**Mortgagee**”). Such Mortgagee shall be subject to all applicable terms and provisions of this Agreement, except as otherwise expressly provided herein.

17.7.2 If the City is given notice of any Mortgage, and the address to which notices to the Mortgagee can be sent, the City will thereafter use commercially reasonable efforts simultaneously to send to such Mortgagee, at the address so given, a copy of any notice given to Cubs alleging Default or other non-performance by Cubs, which could entitle the City to exercise its rights or pursue remedies hereunder. All such notices shall be given pursuant to the provisions of Section 16 of this Agreement and consistent with the Non-Disturbance and Recognition Agreement in the form attached hereto as Exhibit H (or in such other form substantially similar thereto as may be requested by such Mortgagee). If the City is required to give notice to more than one Mortgagee (or group of lenders), the unintentional failure of the City to provide notice to any such additional Mortgagee shall not be a breach by the City of this Section 17.7. In the event the City has unintentionally failed to provide notice to such additional Mortgagee or additional Mortgagees (each, an “**Omitted Mortgagee**”), the sole remedy of such Omitted Mortgagee shall be an extension of any applicable Cure Period in respect of the Default or other non-performance claimed in the notice to Cubs for a period of thirty (30) days from the date such Omitted Mortgagee discovers and provides notice to the City it has not received the notice described in this Section **Error! Reference source not found.**; provided, however, if such Omitted Mortgagee fails to discover and provide notice to the City it has not received the notice described in this Section **Error! Reference source not found.** within sixty (60) days following expiration of the applicable Cure Period, such Omitted Mortgagee shall have no cure (or additional cure) rights pursuant to this Section **Error! Reference source not found.**.

17.7.3 Any Mortgagee shall be deemed to be a Requesting Party as set forth in Section 17.6 hereof, and the City Manager (or his or her designee) shall have the right to execute any Status Statement reasonably requested by a Mortgagee. Additionally, upon the written request of any Mortgagee, the City shall execute and deliver a Non-Disturbance and Recognition Agreement in the form attached to this Agreement as Exhibit H (or in such other form substantially similar thereto as may be requested by such Mortgagee). If the City is required to provide a status statement or a Non-Disturbance and Recognition Agreement to more than one Mortgagee (or group of lenders), the failure of the City to provide a separate statement or Non-Disturbance and Recognition Agreement to any such additional Mortgagee shall not be a breach by the City of this Section 17.7, provided such additional Mortgagee may thereafter request in writing the City provide such separate status statement and/or or a Non-Disturbance and Recognition Agreement.

17.8 Successors and Assigns. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D), provided however Cubs’ rights and obligations hereunder may be assigned or transferred at any time the assignor is

not in Default under this Agreement to a single person or entity which has acquired the entirety of such rights and obligations either (i) as a successor in interest to Cubs or any Mortgagee and has acquired all ownership and operating (franchise) rights and interest in the Team, or (ii) pursuant to foreclosure of any Mortgage on the right, title and interest of Cubs in and under this Agreement and all other ownership and operating (franchise) rights and interest, provided in either case the successor has expressly and in writing for the benefit of the City either (A) assumed all of the obligations of the assignor under this Agreement including but not limited to all obligations of Cubs arising prior to the date of such assignment or transfer, with respect to this Agreement, or (B) assumed all of the obligations of the assignor under this Agreement arising from and after the date of such assignment or transfer, with respect to this Agreement, provided, in the case of an assumption pursuant to this item (B), either (1) Cubs, or (2) a party with financial capabilities substantially equivalent to or better than the assignor on the date of such assignment (or otherwise reasonably acceptable to the City in the case of an assignment by an assignor which is not Cubs or its Affiliate) shall guaranty to the City the obligations of the assignor under this Agreement arising prior to the date of such assignment or transfer.

17.9 Waiver. The Parties agree neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

17.10 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement (whether by a Party, or by a permitted successor or assign to all or any interest of a Party) shall be commenced and maintained in the Superior Court for Maricopa County, in Phoenix, Arizona, and the Parties (and their successors and assigns) agree and consent to the exclusive jurisdiction of such Superior Court. Cubs (and their successors and assigns) waive all right to seek removal of any action to any court (federal or state) other than the Superior Court in and for Maricopa County, Arizona.

17.11 Attorneys' Fees and Costs. In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or requirement of this Agreement, or any of such Party's rights or remedies under this Agreement, or on in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of its reasonable attorneys' fees, court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.

17.12 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

17.13 Time of Essence. Time is of the essence in implementing the terms of this Agreement.

17.14 **Headings.** The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

17.15 **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement. The Recitals set forth at the beginning of this Agreement and the introductory paragraphs preceding the Recitals are incorporated into this Agreement, and the Parties hereby confirm the accuracy of the Recitals.

17.16 **Construction.** The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement reflecting ambiguous or conflicting terms or provisions contained in this Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

17.17 **No Partnership; Third Parties.** Nothing in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between the City and Cubs. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except each Mortgagee shall be a third party beneficiary of the provisions of this Section 17.17, and except the protection of the indemnification provisions of this Agreement shall extend to all agents, attorneys, Council members and employees of the City acting in the course and scope of their employment or engagement and all such persons shall be and are intended to be, third party beneficiaries of such indemnification provisions.

17.18 **Amendment.** No change, addition or deletion is to be made to this Agreement, except by a written amendment approved by the City Council and executed by the Parties.

1.1.13 Although the material terms of this Agreement shall not be changed without City Council approval, the City Manager and Cubs shall have the right (but not the obligation), upon their mutual agreement, to vary or modify minor, administrative, technical or procedural terms of this Agreement dealing with, for example and without limitation, diligence, approvals or conceptual plans, or to amend or otherwise modify legal descriptions of the City Site or portions thereof, including the Spring Training Facilities Site, Stadium Site, Team Facilities Site or City Fields Site, as applicable.

1.1.14 Within ten (10) days after any approved amendment to this Agreement, pursuant to this Section 17.18, such approved amendment shall be recorded in the office of the Maricopa County, Arizona Recorder.

17.19 **Limited Severability.** The Parties agree in the event any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Law) such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further shall perform all

acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as and if reformed in accordance with this Section 17.19.

17.20 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so the signatures of all Parties may be physically attached to a single document.

17.21 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter. With the exception of the Lease Agreement, all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), including, without limitation, the February 27, 2010 Memorandum of Understanding between the Parties, are hereby superseded and merged into this Agreement.

17.22 Survival. All agreements and indemnities in this Agreement shall survive the execution and delivery of this Agreement, the consummation of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

17.23 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Spring Training Facilities Site shall run with the land and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Spring Training Facilities Site. Wherever the term “**Party**” or the name of any particular Party is used in this Agreement such term shall include any such Party’s permitted successors and assigns.

17.24 Compliance with Immigration Laws and Regulations.

1.1.15 Pursuant to the provisions of A.R.S. §41-4401, Cubs warrants to the City Cubs is in compliance with all Federal Immigration laws and regulations which relate to its employees who work on the construction of the Project and, to the extent mandatory with the E-Verify Program under A.R.S. §23-214(A). Cubs acknowledges a breach of this warranty by Cubs or any of its Affiliates is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any subcontract. To the extent permitted by law, the City retains the legal right to inspect the papers of any employee of Cubs or any Affiliate who works on the construction of the Project to ensure compliance with this warranty.

1.1.16 The City may conduct random verification of the employment records of Cubs and any of its Affiliates to ensure compliance with this warranty.

1.1.17 The City will not consider Cubs or any of its Affiliates in material breach of the foregoing warranty if Cubs and its Affiliates establish they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

1.1.18 The provisions of this Article must be included in any contract Cubs enters into with all persons who provide services under this Agreement or any other contract with the City. As used in this Section 17, “services” are defined as furnishing labor, time or effort in the State of Arizona by a

contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

17.25 Conflict of Interest Statute; Compliance with Financing Requirements. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

17.26 Prohibition of Doing Business with Sudan and Iran. Pursuant to A.R.S. §§35-391.06 and 35-393-06, Cubs hereby certifies to the City Cubs does not have “scrutinized” business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. Cubs acknowledges, in the event either of the certifications to the City by Cubs contained in this paragraph is determined by the City to be false, the City may terminate this Agreement and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393-06.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its City Manager, and Cubs have signed the same, on or as of the day and year first written above.

[SIGNATURES APPEAR ON THE FOLLOWING TWO PAGES]

CITY:

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: Christopher J. Brady
Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Christopher J. Brady, the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged he signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

Cubs:

CHICAGO CUBS BASEBALL CLUB, LLC, a
Delaware limited liability company

By:_____

Its:_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of, Chicago Cubs Baseball Club, LLC, a Delaware limited liability company, who acknowledged he signed the foregoing instrument on behalf Cubs.

Notary Public

My commission expires:

LIST OF EXHIBITS

- A Legal Description of City Site
- B Depiction of Spring Training Facilities Site
- C Public Street Improvements
- D Facilities Use Agreement
- E [Reserved]
- F-1 Issue Resolution Ladder
- F-2 Dispute Resolution Process
- G Insurance Requirements
- H Non-Disturbance and Recognition Agreement

EXHIBIT A
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT
Legal Description of City Site

A Parcel of Real Property Located in the North Half of Section 18, Township One North, Range Five East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Said Parcel described as follows:

Commencing West Corner of said Section 18, thence North 89 degrees 25 minutes 44 seconds East along the Mid Section line of said Section 18 a distance of 1,044.57 feet;

thence North 01 degrees 21 minutes 36 seconds West a distance of 44.91 feet; to the POINT OF BEGINNING, said point being on the North Right-of-Way line of West 8th Street;

thence North 01 degrees 21 minutes 36 seconds West a distance of 291.50 feet;

thence South 89 degrees 44 minutes 22 seconds West a distance of 406.01 feet;

thence North 33 degrees 09 minutes 44 seconds East a distance of 261.23 feet;

thence North 13 degrees 48 minutes 55 seconds East a distance of 286.14 feet;

thence North 64 degrees 24 minutes 13 seconds East a distance of 665.81 feet;

thence North 60 degrees 20 minutes 42 seconds East a distance of 428.26 feet;

thence North 76 degrees 36 minutes 26 seconds East a distance of 220.73 feet;

thence North 63 degrees 26 minutes 05 seconds East a distance of 435.13 feet;

thence North 87 degrees 52 minutes 34 seconds East a distance of 231.33 feet;

thence South 00 degrees 16 minutes 13 seconds East a distance of 266.65 feet;

thence South 89 degrees 44 minutes 03 seconds East a distance of 1,372.64 feet;

thence North 00 degrees 19 minutes 56 seconds East a distance of 666.54 feet;

thence North 74 degrees 25 minutes 30 seconds East a distance of 101.70 feet;

thence South 02 degrees 12 minutes 17 seconds East a distance of 26.36 feet;

thence North 89 degrees 49 minutes 36 seconds East a distance of 71.46 feet;

thence North 01 degrees 25 minutes 15 seconds West a distance of 65.74 feet;

thence North 72 degrees 12 minutes 48 seconds East a distance of 117.11 feet;

thence South 00 degrees 18 minutes 29 seconds West a distance of 929.21 feet;

thence North 60 degrees 18 minutes 22 seconds West a distance of 11.48 feet;

thence South 00 degrees 18 minutes 29 seconds West a distance of 102.37 feet;

thence South 90 degrees 00 minutes 00 seconds East a distance of 128.35 feet to a tangent curve concave to the northwest having a radius of 1,163.76 feet and a central angle of 22 degrees 28 minutes 13 seconds;

thence Northeasterly along said curve to the left a distance of 456.41 feet;

thence North 67 degrees 31 minutes 47 seconds East a distance of 121.78 feet to a tangent curve concave to the southeast having a radius of 710.21 feet and a central angle of 22 degrees 28 minutes 13 seconds;

thence Northeasterly along said curve to the right a distance of 278.53 feet;

thence South 90 degrees 00 minutes 00 seconds East a distance of 105.32 feet to a point on the East Section line of said Section 18;

thence South 89 degrees 05 minutes 04 seconds East a distance of 32.29 feet; to a non-tangent curve, concave to the northeast, having a radial bearing of South 58 degrees 42 minutes 53 seconds West and a radius of 243.45 feet;

thence Southeasterly along said non-tangent curve to the left through a central angle of 14 degrees 38 minutes 40 seconds a distance of 62.22 feet;

thence South 45 degrees 56 minutes 30 seconds East a distance of 79.00 feet to a tangent curve concave to the southwest having a radius of 22.50 feet and a central angle of 86 degrees 37 minutes 48 seconds;

thence Southwesterly along said curve to the right a distance of 34.02 feet to a reverse curve concave to the southeast having a radius of 896.80 feet and a central angle of 39 degrees 45 minutes 05 seconds, said curve being on the west Right-of-Way line of North Dobson Road;

thence Southwesterly along said curve to the left a distance of 622.20 feet;

thence South 00 degrees 56 minutes 23 seconds West along the west Right-of-Way line of North Dobson Road, a distance of 434.06 feet;

thence South 45 degrees 11 minutes 46 seconds West a distance of 27.69 feet to a point 45.00 feet north of the Mid Section line of said Section 18, said point being on the north Right-of-Way line of West 8th Street;

thence South 89 degrees 27 minutes 07 seconds West along the north Right-of-Way line of West 8th Street, a distance of 2,583.62 feet;

thence South 89 degrees 25 minutes 34 seconds West along the north Right-of-Way line of West 8th Street, a distance of 1,613.32 feet to the POINT OF BEGINNING.

The area containing 5,493,668.71 square feet, or 126.11 acres more or less.



October 5, 2011

EXHIBIT B
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT
Site Diagram of Spring Training Facilities Site

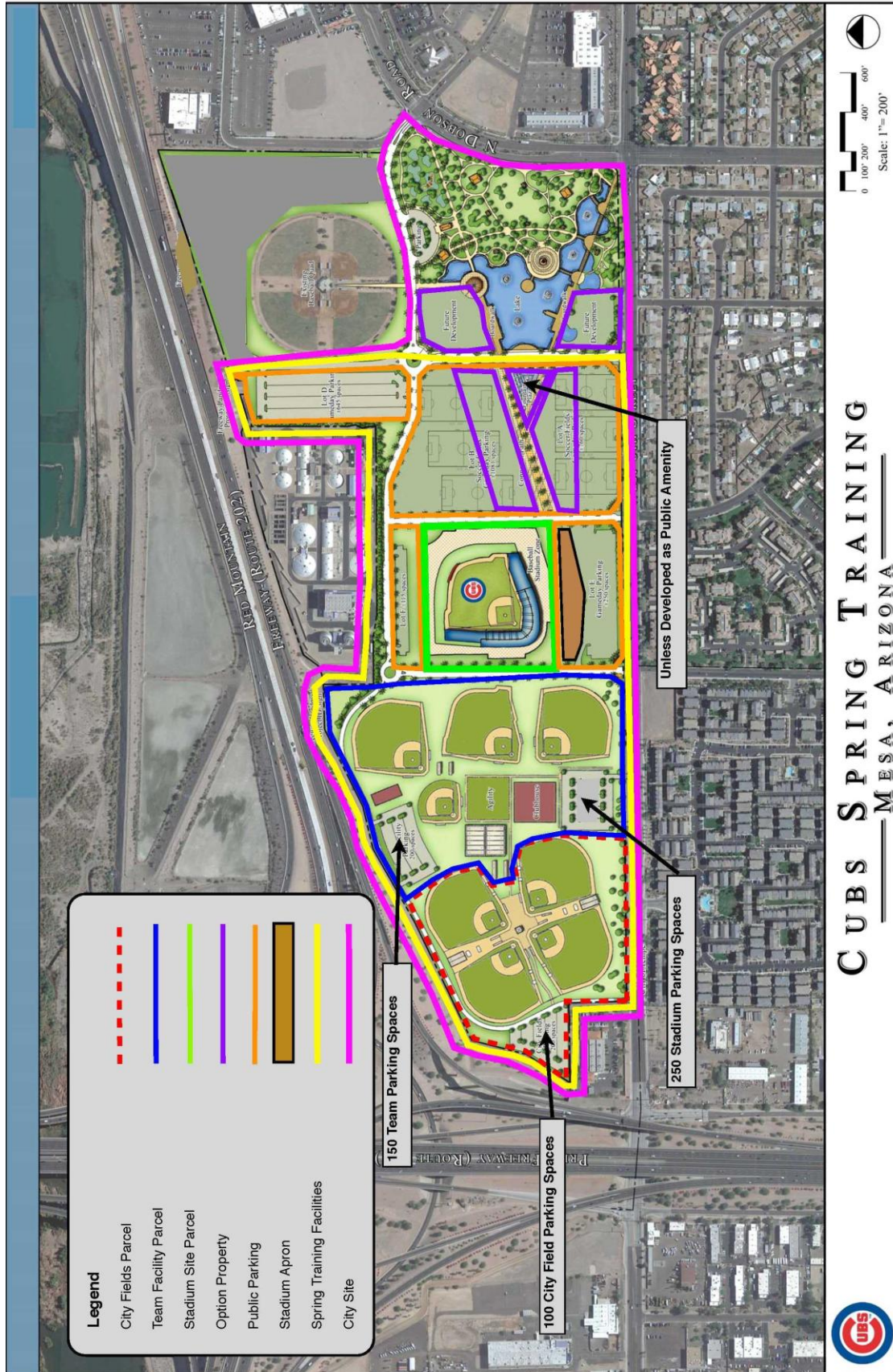


EXHIBIT C

TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT

Public Street Improvements

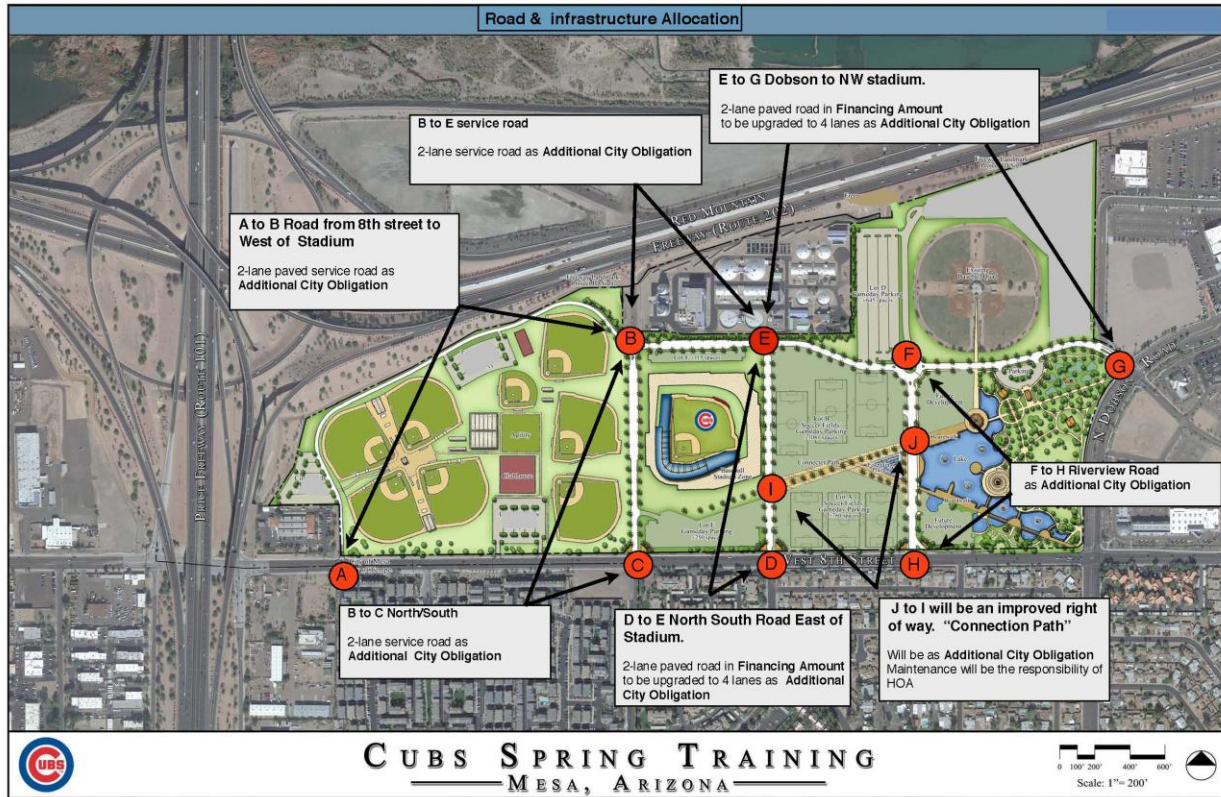


EXHIBIT D
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT
Facilities Use Agreement

When recorded, return to:

City of Mesa
20 East Main Street
Mesa, Arizona 85211
Attention: City Attorney

FACILITIES USE AGREEMENT

By and between

CITY OF MESA, ARIZONA,
an Arizona municipal corporation;

and

Chicago Cubs Baseball Club, LLC,
a Delaware limited liability company

_____, 2011

FACILITIES USE AGREEMENT

THIS FACILITIES USE AGREEMENT (“**Agreement**”) is made as of this ____ day of _____, 2011 (the “**Effective Date**”), by and between the City of Mesa, an Arizona municipal corporation of the State of Arizona (the “**City**”), and Chicago Cubs Baseball Club, LLC, a Delaware limited liability company (“**Cubs**”). The City and Cubs are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**.” Capitalized terms used in this Agreement (including this introductory paragraph) shall have the meanings ascribed to them parenthetically in this Agreement and in Article 1 below.

RECITALS

A. Cubs is the sole owner and holder of the Chicago Cubs baseball team (the “**Team**”) and all franchise rights existing with respect to the Team granted by Major League Baseball.

B. The Team has conducted its Spring Training at facilities located within the City for 46 years, starting in 1952, utilizing the City’s HoHoKam Park and certain other facilities at the City’s Fitch Park (the “**Existing Facilities**”).

C. Cubs had previously announced it would consider conducting its Spring Training elsewhere unless the City was able to provide the Team an updated, “state of the art” stadium and training and related facilities, similar to those being provided to Cactus League teams by other municipalities in the metropolitan Phoenix area.

D. The City acknowledged the Existing Facilities are sufficient in size and scope for many purposes and teams but do not have the capacity or amenities to maximize the benefits of the Team to the City’s economy. The City therefore determined to provide the Team with newer facilities, in order for Cubs to cause the Team to continue to conduct its spring training, player development and related activities (collectively, “**Spring Training**”) in the City, while concurrently providing greater direct (e.g. sales taxes) and indirect (e.g., tourism) revenues to the City.

E. Attendance at the Team’s Spring Training games has historically been generally higher than any other Cactus League team and generates significant tax revenue for the City, the region and the state.

F. The City, acting through its City Council, has found and determined in the exercise of its legislative discretion the Cactus League and Cubs Spring Training are important community assets providing significant derivative economic benefits and community amenities for the City’s residents, businesses and visitors, as well as significant regional and state economic benefits. The City is committed to maintaining and enhancing these important community benefits.

G. The Parties have identified a site, owned by the City and depicted on Exhibit A attached hereto (the “**City Site**”), within which the Spring Training Facilities (as more fully described in this Agreement) can be constructed and operated. The City determined, in its legislative discretion, that such portion of the City Site, was being under-utilized, prior to the construction of the Spring Training Facilities. In addition, on November 2, 2010, a majority of the City electorate voting thereon approved and authorized the City to expend public funds, grant tax concessions or relief, or incur debt in an amount greater than \$1,500,000.00, and/or grant City-owned land of a fair market value in excess of \$1,500,000.00 to construct or aid in the construction of, and future capital improvement of, a City-owned stadium, training, and practice facility for Cactus League Spring Training baseball.

H. Cubs have evidenced their willingness and desire to continue their Spring Training in the City, subject to and in accordance with the terms and conditions of this Agreement, upon the provision by the City of a new stadium and appurtenant baseball-related improvements (collectively, the “**Spring Training Facilities**”), Public Parking and the other Improvements contemplated by this Agreement within those areas of the City Site depicted on Exhibit A attached hereto (“**Spring Training Facilities Site**”), and upon the granting to Cubs of certain operational and use rights in accordance with the terms and conditions of this Agreement.

I. In addition to Cubs’ use as described in this Agreement, the Stadium and the other Spring Training Facilities will provide significant use and enjoyment for the residents of the City of Mesa and the more than 100,000 fans who come to the City to watch baseball each year at Spring Training, and for other entertainment and cultural events (whether baseball-related, or otherwise) proposed to be held at the Spring Training Facilities throughout the year.

J. In addition to Cubs’ use as described in this Agreement, the Stadium and Spring Training Facilities will provide significant full-time and part-time employment opportunities for the residents of the City, with the City and Cubs anticipating Cubs will hire certain full-time employees for office and administrative purposes at the Spring Training Facilities Site, and further providing employment opportunities for potentially as many as a thousand part-time employees, vendors and concessionaires, not including at least twenty-five (25) Major League or Minor League baseball players with an average annual salary in excess of \$100,000.00, who will use the facility at times throughout the year upon full implementation of the Spring Training Facilities.

K. The City will realize increased direct, pecuniary, indirect and intangible benefits as a consequence of the construction and operation of the Spring Training Facilities, Public Parking, new public park amenities and other Improvements within the City as described in this Agreement, including the potential for development of unique entertainment, recreation and other facilities within the Spring Training Facilities Site and on the remaining portions of the City Site, thus enhancing the quality of life of the City’s residents and conferring significant economic and non-economic benefits upon the City. The development, redevelopment, operation and expansion of uses of the Spring Training Facilities Site has been determined to be of such value and significance to the City, that the City has undertaken and facilitated development of the Spring Training Facilities, Public Parking and other Improvements described in this Agreement.

L. The City Council has determined, in the exercise of its legislative discretion, and based upon independent economic analysis commissioned and paid for by the City, the objective fair market value of the payment and performance obligations of Cubs which have been bargained for in this Agreement, including but not limited to Cubs’ contractual commitment to occupy and use the Spring Training Facilities for the Term, exceeds the benefits conferred on Cubs by the City under this Agreement.

M. The Parties agree and intend that the acts and obligations of the Parties contemplated in this Agreement (including but not limited to the obligations of the City to cause the Completion of Construction of the Spring Training Facilities pursuant to the terms of the Development Agreement, and the obligations of Cubs to use the Spring Training Facilities as Cubs’ exclusive Spring Training headquarters and as a site for Cubs’ player development, and to play Cubs’ Spring Training games in Mesa for the Term of this Agreement, which Cubs was neither obligated nor under any legal compulsion to do, but which represented a free and voluntary decision by Cubs) are specifically and expressly “bargained for” by and between the Parties as part of the Parties’ promised performance to each other, and therefore constitute “consideration” to support this Agreement, as required by *Turken v. Gordon*, 207 P.3d 709 *et seq.* (Ariz. 2010).

N. The development, redevelopment, operation and use of the Spring Training Facilities Site, as contemplated by and as described in this Agreement, are consistent with the Mesa 2025 General Plan (the “**General Plan**”) and will operate to the benefit of the Parties and the general public.

O. The City has determined the actions taken and expenditures by the City, and the rights and privileges granted by the City pursuant to this Agreement are in connection with economic development activities as this term is used in A.R.S. §9-500.11.A, and will enhance the economic vitality of the City in numerous ways, including without limitation: (i) increasing transaction privilege tax revenues and other revenues to the City; (ii) assisting in the creation and retention of jobs; (iii) increasing the City’s employment base; (iv) establishing the City as a resort destination for City and Maricopa County and State residents, as well as for visitors from elsewhere in the United States, and international visitors from Mexico, Canada, and other countries; (v) encouraging the development of additional restaurants, shops and other amenities on or adjacent to the Spring Training Facilities Site and elsewhere, for residents of the City of Mesa and others; (vi) Cubs’ committing to remain in Mesa and locate its Spring Training facilities in the City for the term of this Agreement; (vii) stimulating further economic development; and (vi) otherwise improving and enhancing the economic welfare of the residents of the City.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing introductory paragraphs and Recitals, and the representations, mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

1. **Definitions.** In this Agreement, unless a different meaning clearly appears from the context:

1.1. “**AAA**” means as defined in **Exhibit “H”**.

1.2. “**Additional Public Parking**” means such public parking areas the City may elect to provide for Stadium Events that are within the City Site and outside the Spring Training Facilities Site.

1.3. “**Affiliate**” means, as applied to any Person, the Person and any Person directly or indirectly controlling, controlled by, or under common control with, the Person or a blood relative or spouse of such Person, if such Person is a natural person and for purposes of Cubs (and for purposes of this Agreement only) includes any entity controlled or owned by any member of the Ricketts family. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “**Person**” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, municipal corporations, municipalities and other organizations, whether or not legal entities.

1.4. “**Agreement**” means this Facilities Use Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The introductory paragraphs and Recitals set forth above are incorporated herein by reference and form a part of this Agreement.

1.5. “**Applicable Laws**” means the federal, state and county laws, rules, ordinances and regulations, and City Regulations, in effect at the time any determination of compliance of the Parties with respect to their obligations under this Agreement is otherwise necessary or appropriate under this Agreement.

1.6. “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

1.7. “**BOC**” means the Office of the Commissioner of Baseball, an unincorporated association comprised of the Major League Clubs who are party to the Major League Constitution, and any successor organization thereto.

1.8. “**Cactus League**” means the Major League Baseball Clubs conducting Spring Training in Arizona during the Spring Training Season.

1.9. “**Capital Expenditure**” means the replacement of an existing asset, facility or other physical component (of the Stadium, the Team Facilities, or the City Fields, as applicable) that meets the applicable requirements for being depreciable or otherwise achieves applicable capitalization thresholds under GAAP.

1.10. “**Capital Improvement**” means any of the following that meets the applicable requirements for being depreciable or otherwise achieves applicable capitalization thresholds under GAAP: (a) any element, amenity, value, capacity, capability, use, function of the type or character present in facilities at which at least five (5) MLB clubs conduct Spring Training as part of the Cactus League, to ensure that the Spring Training Facilities remain at the forefront of all Cactus League Facilities; and (b) any replacement in Year 10 or Year 20 of (i) Playing Field turf, (ii) Stadium lighting, (iii) HVAC systems, (iv) seats, (v) concession and food preparation areas and equipment of the type paid for in the Financing Amount, and (vi) scoreboards, provided that the replacement of such items in other Years constitutes a Capital Expenditure.

1.11. “**Capital Improvements and Capital Expenditures Account**” means as defined in Section 7.2.

1.12. “**City**” means as defined in the introductory paragraph of this Agreement.

1.13. “**City Calendared Event**” means any event scheduled by the City for the City Fields and, if applicable, the Public Parking, as provided in Sections 2.1 and 2.2.

1.14. “**City Code**” means the Code of the City of Mesa, Arizona, as amended from time to time.

1.15. “**City Council**” means the City Council of the City.

1.16. “**City Fields**” means the facilities located on the City Fields Site.

1.17. “**City Fields Parking**” means parking provided within the City Fields Site, as depicted on Exhibit “A”.

1.18. “**City Fields Site**” means the portion of the Spring Training Facilities Site upon which the City Fields are constructed, as presently depicted on Exhibit “A” attached hereto.

1.19. “**City-Owned Utility Infrastructure**” means water (potable and non-potable), wastewater (sanitary sewer) and natural gas infrastructure and facilities, including all conduit, pipes or other means of providing water, sewer and gas services, together with all necessary Third Party dedications, easements or other rights-of-way.

1.20. “**City Regulations**” means the City charter, City Code, ordinances, rules, regulations, standards, procedures, and administrative policies in effect from time-to-time.

1.21. “**City Site**” means the site owned by the City in which the Spring Training Facilities Site is located, as legally described in Exhibit “B” and depicted on Exhibit “A”.

1.22. “**City Stadium Events**” means as defined in Section 4.10.

1.23. “**City Suite**” means as defined in Section 4.7.

1.24. “**Commencement Date**” means as defined in Article 3.

1.25. “**Commissioner**” means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.

1.26. “**Complete**” or “**Completion**” means, with respect to each Improvement which is the subject of this Agreement: (a) the Improvement is operational and fully usable in all material respects for its intended use in accordance with all Applicable Laws and this Agreement; (b) all required governmental permits, approvals and certificates of occupancy (as applicable) have been properly, validly and permanently issued; and (c) the City or Cubs (as applicable) shall have been provided with a certification from the architect, engineer or other applicable technical consultant stating that the work has been completed in accordance with the construction contract documents (subject only to minor and insubstantial “punch list” items which do not affect operation or use of the Improvement for its intended use in accordance with all Applicable Laws and this Agreement, as applicable).

1.27. “**Comprehensive Sign Plan**” means as defined in the Development Agreement.”

1.28. “**Condemning Authority**” means as defined in Section 16.1.

1.29. “**CPI**” means as defined in Section 4.1.

1.30. “**Cubs**” means as defined in the introductory paragraph of this Agreement.

1.31. “**Cure Period**” means as defined in Section 10.1.

1.32. “**Default**” means one or more of the events described in Section 10.1.

1.33. “**Default Notice**” means as defined in Section 10.1.

1.34. “**Defaulting Party**” means as defined in Section 10.1.

1.35. “**Default Rate**” means as defined in Section 4.1(c).

3.

1.36. **“Delivery”** means delivery of the Spring Training Facilities to Cubs as defined in Section

1.37. **“Designated Representatives”** means as defined in Section 19.2.

1.38. **“Development Agreement”** means that certain Development Agreement (Spring Training Facilities), dated as of the date of this Agreement, between the City and Cubs, and recorded in respect of the Spring Training Facilities Site.

1.39. **“Early Termination Payment”** means as defined in Section 11.1.

1.40. **“Enforced Delay”** means as defined in Section 8.

1.41. **“Facilities Equipment”** means (i) any furnishings, fixtures and equipment so affixed to the realty or Improvements they are deemed part of the realty, e.g., mounted cupboards and cabinets, telephone, affixed furnishings and equipment related to viewing Stadium events, audio or alarm systems incorporated within the buildings constituting the applicable Improvements, mounted flat-screen televisions, video equipment and software included as part of initial construction (but not part of subsequent capital improvements) and including without limitation cables and wiring (but only if placed inside interior walls) to any elements or item listed in this Section 1.39; and (ii) non-affixed suite and patio furniture, press box furniture and similar Stadium-related elements provided as part of the initial furnishings only. Except as expressly noted in the previous sentence, Facilities Equipment does not include any non-affixed material or equipment, any furniture, any computer equipment or software, telephone handsets, supplies and similar items.

1.42. **“Fair Market Value”** means as defined in Section 4.1.

1.43. **“Financing Amount”** means as defined in the Development Agreement.

1.44. **“Impositions”** means as defined in Section 6.

1.45. **“Improvement”** means, as applicable, any of the Stadium, Team Facilities, City Fields, Public Parking, Additional Improvements (as defined in the Development Agreement) and other improvements included in Additional City Obligations (as defined in the Development Agreement) and/or Capital Improvements contemplated by this Agreement.

1.46. **“Indemnified City Parties”** means as defined in Section 14.1.

1.47. **“Indemnified Cubs Parties”** means as defined in Section 14.2.

1.48. **“Interim Capital Improvements”** means as defined in Section 7.2(a)(2).

1.49. **“Lease Year”** means the period from February 1 through and including January 31 of each year during the Term.

1.50. **“Maintenance”** means as defined in Section 4.5(a).

1.51. **“Maintenance Standards”** means the standards of maintenance, repair and operations maintained by managers of comparable Spring Training facilities in the State in accordance with reasonable commercial practices then in use.

1.52. “**Major League Baseball**” or “**MLB**” means, depending on the context, any or all of (a) the BOC, each other MLB Entity and/or all boards and committees thereof, including, without limitation, Executive Council and the Ownership Committee, and/or (b) the Major League Clubs acting collectively.

1.53. “**Major League Baseball Club**” or “**Major League Club**” means any professional baseball club entitled to the benefits, and bound by the terms, of the Major League Constitution.

1.54. “**Major League Constitution**” means the Major League Constitution adopted by the Major League Clubs (which amended and superseded the Major League Agreement dated January 1, 1975, the Agreement in re Major Leagues Central Fund dated as of December 8, 1983, as amended, and the respective constitutions of the former American and National Leagues of Professional Baseball Clubs) as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.

1.55. “**Maximum City Electric Power Contribution**” means as defined in Section 4.2(b).

1.56. “**MLB Approval**” means, with respect to the Major League Baseball Clubs, the Commissioner, the BOC or any other MLB Entity, any approval, consent or no-objection letter required to be obtained from such Person(s) pursuant to the MLB Rules and Regulations (as exercised in the sole and absolute discretion of such Person(s)).

1.57. “**MLB Entity**” means each of the BOC, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., The MLB Network, LLC, SportsOnEarth, LLC, MLB Advanced Media, L.P., and/or any of their respective present or future affiliates, assigns or successors.

1.58. “**MLB Governing Documents**” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (a) the Major League Constitution, (b) the Basic Agreement between the Major League Baseball Clubs and the Major League Baseball Players Association, (c) the Professional Baseball Agreement between the BOC, on behalf of itself and the Major League Baseball Clubs, and the National Association of Professional Baseball Leagues, (d) the Major League Rules (and all attachments thereto), (e) the Interactive Media Rights Agreement, effective as of January 20, 2000, by and among the BOC, the various Major League Baseball Clubs, MLB Advanced Media, L.P. and various other MLB Entities and (f) each agency agreement and operating guidelines among the Major League Baseball Clubs and any MLB Entity, including, without limitation, the Amended and Restated Agency Agreement, effective as of November 1, 2006, by and among Major League Baseball Properties, Inc., the various Major League Baseball Clubs and the BOC (and the Operating Guidelines related thereto).

1.59. “**MLB Rules and Regulations**” means (a) the MLB Governing Documents, (b) any present or future agreements or arrangements entered into by, or on behalf of, the BOC, any other MLB Entity or the Major League Baseball Clubs acting collectively, including, without limitation, agreements or arrangements entered into pursuant to the MLB Governing Documents, and (c) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or behalf of, the Commissioner, the BOC or any other MLB Entity as in effect from time to time.

1.60. “**Mortgage**” means as defined in Section 19.8.

- 1.61. **“Mortgagee”** means as defined in Section 19.8.
- 1.62. **“Notice of Claim”** means as defined in Section 14.4.
- 1.63. **“Objection Notice”** means as defined in Section 7.5.
- 1.64. **“Order”** means the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body.
- 1.65. **“Party”** and **“Parties”** means as defined in the introductory paragraph preceding the Recitals of this Agreement.
- 1.66. **“Parking Lots”** means the paved and improved outdoor parking lots constructed on the Stadium Site, Team Facilities Site and City Fields Site, and identified as such in the Development Agreement.
- 1.67. **“Permitted Exceptions”** shall mean the exceptions to the City's fee simple title to the Spring Training Facilities existing as of the Effective Date, as set forth on Exhibit “E” attached hereto; provided, however, the Parties' Designated Representatives may jointly amend Exhibit “E” to reflect changes in the condition of title to the Spring Training Facilities Site during the Term.
- 1.68. **“Playing Fields”** means any and all playing fields located within the Spring Training Facilities Site, including, without limitation, within the Stadium and the practice fields which are part of the Team Facilities and City Fields.
- 1.69. **“Pre-Termination Notice (City Regulations)”** means as defined in Section 12.1
- 1.70. **“Pre-Termination Notice (Default)”** means as defined in Section 10.3
- 1.71. **“Providing Party”** means as defined in Section 19.7.
- 1.72. **“Public Parking”** means parking for a minimum of 2,500 automobiles (subject to the other terms and provisions of this Agreement) in accordance with Applicable Laws within those portions of the Spring Training Facilities Site designated for Public Parking on Exhibit “A” and which is in addition to parking in the Parking Lots. The Public Parking need not be improved, asphalt, cement or otherwise, but will be on the Spring Training Facilities Site unless otherwise agreed by Cubs and may be provided by the temporary or occasional use of grass fields, not part of the Spring Training Facilities, located west of Riverview Drive.
- 1.73. **“Public Safety Services”** means as defined in Section 4.4.
- 1.74. **“Public Safety Services Fee”** means as defined in Section 4.4(a).
- 1.75. **“Public Street Improvements”** means roadways, driveways, streets and other public right-of-way improvements including, without limitation, all site preparation, street paving, curb, gutter, sidewalks and other pedestrian walkways, bike or other alternative transportation facilities or lanes (as applicable), traffic control devices (including traffic signals and signage) and landscaping, together with all necessary Third Party dedications, easements or other rights-of-way.
- 1.76. **“Real Property Tax”** means as defined in Section 6.1(a).

- 1.77. “**Repair**” means as defined in Section 4.5(a).
- 1.78. “**Requesting Party**” means as defined in Section 19.7.
- 1.79. “**Scheduled Capital Improvements**” means as defined in Section 7.1.
- 1.80. “**Small-Stadium Event**” means an event held at the Stadium, for which no individual admission is charged and total attendance is less than 500 or which is not open or available to the public (e.g., a private party or ceremony, conference or retreat). No Small-Stadium Event shall be of a type or nature which could bring shame, disrepute or opprobrium upon the City.
- 1.81. “**Spring Training**” means spring training, player development and related activities.
- 1.82. “**Spring Training Facilities**” means the Stadium, Team Facilities and City Fields.
- 1.83. “**Spring Training Facilities Site**” means the portion of the City Site upon which the Spring Training Facilities are constructed, as depicted on Exhibit “A” attached hereto; provided, upon Completion of the Spring Training Facilities, the City shall have ordered a boundary survey of the Spring Training Facilities Site and a legal description and depiction prepared by a licensed surveyor, which thereupon shall be attached hereto as an updated Exhibit “C” and Exhibit “C-1”, respectively.
- 1.84. “**Spring Training Season**” means the annual period during which MLB conducts spring training operations and/or training for the regular MLB season, generally running from February 1 through April 30 of each calendar year but concluding no later than the first MLB regular season game in such MLB season, and played by Cubs, subject to change at the discretion of MLB.
- 1.85. “**Stadium**” means the Spring Training baseball stadium and appurtenant facilities located on the Stadium Site.
- 1.86. “**Stadium Apron**” means the area depicted on Exhibit “A” as “Stadium Apron.”
- 1.87. “**Stadium Events**” means any event or other use permitted under Applicable Laws which takes place at the Stadium other than a Small Stadium Event, including, but not limited to, Cubs home Spring Training baseball games, entertainment-related events and all ancillary activity related thereto (e.g., parties, ticket sales, food and beverage concessions and sales, musical and other performances); provided, no Stadium Event shall be of a type or nature which could bring shame, disrepute or opprobrium upon the City.
- 1.88. “**Stadium Parking**” means the parking lot provided adjacent to the Stadium Site and intended to serve the Stadium operations and Team personnel, as depicted on Exhibit “A”.
- 1.89. “**Stadium Site**” means the portion of the Spring Training Facilities Site upon which the Stadium is constructed, as presently depicted on Exhibit “A” attached hereto; provided, upon Completion of the Spring Training Facilities, the City shall have ordered a boundary survey of the Stadium Site surveyed and a legal description and depiction prepared by a licensed surveyor, which thereupon shall be attached hereto as Exhibit “D” and an updated Exhibit “D-1”, respectively.
- 1.90. “**State**” means the state of Arizona.

- 1.91. **“Status Statement”** means as defined in Section 19.7.
- 1.92. **“Team”** means the Chicago Cubs Major League Baseball Club.
- 1.93. **“Team Facilities”** means the facilities located on the Team Facilities Site.
- 1.94. **“Team Facilities Parking”** means the parking lot provided upon the Team Facilities Site, as depicted on Exhibit “A”.
- 1.95. **“Team Facilities Site”** means the portion of the Spring Training Facilities Site upon which the Team Facilities are constructed, as presently depicted on Exhibit “A” attached hereto.
- 1.96. **“Term”** means the term of this Agreement as provided in Section 3.
- 1.97. **“Termination Notice (City Regulations)”** means as defined in Section 12.1
- 1.98. **“Termination Notice (Default)”** means as defined in Section 10.3
- 1.99. **“Third Party”** means any Person or entity other than a Party or an Affiliate of a Party.
- 1.100. **“Treatment Facility”** means the City of Mesa Northwest Wastewater Treatment Facility located adjacent to the Spring Training Facilities Site and any future expansion to or modification of such facilities.
- 1.101. **“Year”** means a year within the Term. For example, Year One means the year of the term that commences on February 1 of the first year of the Term and that terminates on the following January 31; Year Two is the subsequent year, etc.

2. **Lease and Grant of Rights.** The City hereby leases and grants to Cubs and Cubs hereby leases and accepts, for the Term and subject to the terms and conditions set forth in this Agreement, the exclusive right to occupy, use, manage and operate: (i) the Stadium and Team Facilities (which, for the purposes of this Agreement, shall include the Stadium Site and Team Facilities Site inclusive of the Stadium Parking and Team Facilities Parking) at all times during the Term; (ii) the City Fields (which, for the purposes of this Agreement, shall include the City Fields Site inclusive of the City Fields Parking) at all times during each Spring Training Season during the Term; (iii) upon written request of Cubs and approval of the City (which shall not be unreasonably withheld), the City Fields at all times during the Term for Cubs player development; and (iv) the Public Parking for all Cubs home Spring Training games and, absent a City Calendared Event, all Stadium Events during the Term.

2.1. **Stadium and Team Facilities.** Without limitation of the foregoing, at all times during the Term:

(a) **Scheduling and Use.** Cubs shall have exclusive control of the scheduling and use of the Stadium and Team Facilities in accordance with Applicable Laws, subject only to the City's right to conduct the City Stadium Events referenced in Section 2.2(a)(5), including, without limitation:

(1) **Concessions.** Subject to all Applicable Laws and this Agreement, Cubs shall select and employ all concessionaires, licensees and other retail contractors for the Stadium and Team Facilities, including but not limited to the Stadium Parking, concession areas and advertising space.

(2) **Contracts.** Subject to all Applicable Laws and this Agreement, Cubs may enter into contracts in its name or in the name of any Cubs Affiliate relating to any and all of the matters referenced in this Section 2.1 upon terms and conditions which are consistent with the terms of this Agreement.

(3) **Manager and Staff.** Subject to all Applicable Laws and this Agreement, Cubs may hire a manager and staff, as Cubs deem necessary, for the Stadium and Team Facilities.

(4) **Ticketing Services.** Subject to all Applicable Laws and this Agreement, Cubs may provide ticketing services or contract with an outside ticket agency for any or all Stadium Events.

(5) **Event Control.** Cubs shall have the right, at its sole discretion, to cancel or postpone any event to be held at the Stadium (except City Stadium Events), including but not limited to any Spring Training activities, provided however absent good cause (which, for this purpose, shall include but not be limited to any extraordinary occurrence which is beyond a Party's control, any requirement of Major League Baseball and any labor dispute, strike or interruption), Cubs shall still be obligated to play the minimum number of Spring Training home games specified in Section 4.6(b).

(b) **Revenues.** Without limitation of the foregoing, at all times during the Term:

(1) **Stadium and Team Facilities.** Cubs shall control, collect, receive and retain all revenues generated by any means at or in connection with the Stadium and Team Facilities, including but not limited to all revenues from ticket sales and distribution, food and beverage sales, merchandise sales, concessions, merchandise, product and other retail sales, novelties, parking, telecast and broadcast rights, pouring rights, advertising, sponsorship, promotional and signage rights, Stadium and Team Facilities naming rights, luxury suite licenses and any other revenues, consideration, barter, trade, in-kind or other benefit derived or generated in connection with any Stadium Events (expressly excluding City Stadium Events as provided in and subject to Section 4.10) or Small-Stadium Event. Subject to the terms of this Agreement, including without limitation Section 6, Cubs shall be solely and exclusively responsible for all taxes required to be collected or paid with respect to all such revenues.

(2) **City Fields.** Cubs shall control, collect, receive and retain all revenues generated by any use of the City Fields by Cubs and for Cubs'-sponsored events and as agreed by the City. City shall control, collect, receive and retain all revenues generated by any use of the City Fields by City.

(3) **Parking.** Cubs shall control and receive all revenues for parking at the Parking Lots and the Public Parking on all dates when Spring Training Games and other Stadium Events or, if applicable, Small-Stadium Events occur (but expressly excluding City Stadium Events); provided, however, Cubs shall evenly share with the City all "net revenues" received from the Additional Public Parking (if any); for purposes of this Agreement, "net revenues" shall mean gross revenues received by Cubs net of any fees, charges or expenses incurred in connection with operating such parking and associated record-keeping and payments to the City (for example, and not by way of limitation, for security, traffic control and valet services, restoration in the event of damage, revenue collection, record-keeping and insurance) and all taxes required to be collected or paid with respect to such revenues, for which Cubs shall be solely responsible. At the City's sole discretion, the City may make available for use as Additional Public Parking any unimproved portions of the City Site until such areas are improved and in use for commercial, recreational or other purposes which preclude their use as Additional Public Parking. Cubs shall reimburse the City for the actual, reasonable cost to the City of any maintenance or

repairs to the Public Parking (and, as applicable, the Additional Public Parking) in the event of damage caused by Cubs' use; provided however the City shall equally share in the cost of maintenance or repairs to the Additional Public Parking in the event of damage caused by Cubs' use to the extent such costs are not covered by "net revenues" (as described above) received therefrom. Notwithstanding the foregoing, the City shall be responsible for maintenance, including but not limited to ordinary wear and tear, of the Public Parking and Additional Public Parking (if any) during the Term.

(4) **Rates and Charges.** At its sole discretion, Cubs shall set rates and charges to Third Parties for the use of the Stadium and Team Facilities, together with Stadium Parking and Team Facilities Parking, except in connection with the City Stadium Events.

(5) **Signs.** Unless otherwise provided in this Agreement or the Development Agreement, Cubs shall retain all revenue from signage on the Spring Training Facilities Site, exclusive of signage for private development for tenants or owners, as contemplated by the Comprehensive Sign Plan.

2.2. **City Fields.** Without limitation of the foregoing, at all times during the Term:

(a) **Spring Training Use.** Cubs shall have exclusive and complete control over the use, management, operation and scheduling of the City Fields during the Spring Training Season; provided Cubs shall use the City Fields solely and exclusively for Spring Training Activities or other activities related to Major League Baseball.

(b) **Other Uses.** At all other times, Cubs shall have the right to request to use the City Fields and the City shall grant such request absent a conflict with a City Calendared Event or good cause. The Parties agree to cooperate to establish a calendar of scheduled events not later than October 1 of each calendar year during the Term for the succeeding calendar year.

(c) **No Conflicting Use.** The City shall not permit any use of the City Fields by other Major League Baseball Clubs or their Affiliates.

(d) **Maintenance and Repair of City Fields.** During the Term, the City shall be exclusively responsible to provide and pay for all Maintenance and Repair of the City Fields, except any cost arising from the gross negligence or willful misconduct of Cubs, for which Cubs shall be solely responsible.

2.3. **Public Parking.** Without limitation of the foregoing, at all times during the Term, for all Cubs home Spring Training baseball games and, absent a conflict with a City Calendared Event or good cause, for all other Stadium Events (but expressly excluding City Stadium Events), the City shall provide to Cubs, and Cubs shall have exclusive and complete control over the use, management and operation of the Public Parking and, for all Small-Stadium Events, non-exclusive use of the Public Parking.

2.4. **Naming Rights.** Without limitation of the foregoing, at all times during the Term, Cubs shall control and have the exclusive right to sell or otherwise to grant naming or sponsorship rights in respect of the Stadium and Team Facilities inclusive of all Improvements located within the Stadium Site and Team Facilities Site, subject to the approval of the City, which approval shall not be withheld as long as the name(s) or sponsorship(s) of the Stadium or Team Facilities does not include (i) any name of any municipality in Arizona other than the City (e.g., no University of Phoenix stadium); (ii) names of tobacco manufacturers or distributors; (iii) sexually suggestive names or names of businesses which promote adult businesses, activities or entertainment; (iv) products or merchandise related to sexual activity; or (v) names of any nature (whether explicit or implicit) which could reasonably bring disrepute, shame or opprobrium upon the City.

2.5. Signage.

(a) **Comprehensive Sign Plan; Freeway Landmark Signs.** Notwithstanding anything to the contrary in this Agreement and throughout the Term, signs will be permitted within the Spring Training Facilities Site in accordance with the Comprehensive Sign Plan approved by the City as provided in the Development Agreement as well as the freeway landmark signage approved by the City as part of the initial City development approvals in respect of the City Site. For the avoidance of doubt, nothing in this Section 2.5(a) authorizes any signage within the Spring Training Facilities Site except in conformance with such Comprehensive Sign Plan and freeway landmark signage approvals and otherwise in compliance with any applicable City Regulations. Any changes to the Comprehensive Sign Plan and freeway landmark signage approvals within the Spring Training Facilities Site and any portion of the City Site made available for private development, are subject to and require Cubs' written approval.

(b) **Signs on Spring Training Facilities Site.** Subject in all instances to Applicable Laws, the Comprehensive Sign Plan, and the freeway landmark sign approvals, at all times during the Term, the following terms and provisions shall apply to signs within the Spring Training Facilities Site:

(1) **Stadium Site.** Cubs shall have exclusive control of and the unlimited right to design and install all signage on or within the Stadium Site which faces into the Stadium and is not visible from any public right-of-way and retain all revenue therefrom. For purposes of this provision, a sign shall not be deemed to be visible from the public right-of-way if its primary audience is inside the Stadium and visibility from public areas is incidental and unintentional. Cubs shall also have exclusive control of, and unlimited right to design and install, all signage on the Stadium rooftop. Other signs within the Spring Training Facilities Site shall be in accordance with the Comprehensive Sign Plan and freeway landmark sign approvals referenced above. The cost of maintenance, repair and replacement of all signs on the Stadium Site (but expressly not including the Stadium scoreboard) shall be borne solely by Cubs, and shall not be subject to the provisions of Section 4.5(b) relating to Capital Expenditures, or Article 7 relating to Capital Improvements.

(2) **Team Facilities Site.** Cubs shall have exclusive control of all signage within the Team Facilities Site and retain all revenue therefrom. Cubs shall solely bear the cost of all signs within the Team Facilities Site, and the cost of maintenance, repair and replacement of such signs shall be borne solely by Cubs, and shall not be subject to the provisions of Section 4.5(b) relating to Capital Expenditures, or Article 7 relating to Capital Improvements.

(3) **City Fields.** The City shall have exclusive control of all signage within the City Fields; provided, however, the City shall not permit any Third Party signs (i) at any time at the Spring Training Facilities Site, other than at the City Fields Site, unless approved in writing in advance by Cubs, or (ii) during periods of Cubs' use as described in this Agreement at the City Fields Site, unless approved in writing in advance by Cubs. The City shall solely bear the cost of all signs within the City Fields Site, and the cost of maintenance, repair and replacement of such signs shall be borne solely by the City, and shall not be subject to the provisions of Section 4.5(a) relating to Capital Expenditures, or Article 7 relating to Capital Improvements.

(4) **Freeway Landmark Sign.** Cubs may, but are not required to, erect and maintain one freeway landmark sign in connection with the Spring Training Facilities Site. In addition to the terms of the freeway landmark sign approvals, the following terms and provisions shall govern the acquisition, maintenance and disposition of such freeway landmark sign:

(i) Cubs and the City shall reasonably agree on the “footprint” required for such sign on real property owned by the City, and Cubs shall purchase such area from the City at a cost of \$9.00 per square foot of area. Conveyance of such area to Cubs shall be by special warranty deed in the standard form used by City, and shall contain the disposition or reacquisition terms set forth below in subsection (v).

(ii) Cubs shall provide written notice to the City of its intention to acquire the area described in subsection (i) immediately above, no later than the Commencement Date; and if written notice has not been received by the City by such time, the City shall have no further obligation to convey the said real property to Cubs. Upon receipt by the City of such notice from Cubs, accompanied by payment of all sums required in connection with the purchase, the City shall promptly convey such real property to Cubs, upon satisfaction of all notice and similar requirements set forth in the Applicable Laws.

(iii) Promptly following conveyance of such area to Cubs, Cubs shall commence the installation of, and shall diligently thereafter prosecute the completion of such installation, and at Cubs’ sole cost and expense, the erection and placement of such sign. Cubs additionally shall be solely responsible for the cost of infrastructure to run any required utility services to the sign footprint, and shall negotiate (at Cubs’ sole cost and expense) with all applicable parties for any required easements with respect to the placement of such infrastructure.

(iv) Upon completion of installation of the freeway landmark sign, Cubs shall maintain such sign, in good operating condition and repair throughout the Term.

(v) At the termination of this Agreement, or at any earlier time that Cubs (or any permitted successor or assign) is no longer conducting Spring Training activities at the Spring Training Facilities Site, Cubs shall, promptly upon written demand from the City, and at no cost or expense to the City, convey the sign footprint area real property, the freeway landmark sign, and all rights appurtenant thereto, to City, free and clear of all liens, claims and encumbrances, and by instruments reasonably requested by the City.

(c) **No Signage on Wastewater Treatment Facility.** The City, during the Term of this Agreement, will not install or permit signs on the City’s Northwest Wastewater Treatment Facility located adjacent to the Spring Training Facilities Site, which signs face or are visible from the interior of the Stadium, unless otherwise agreed to by City and Cubs.

(d) **Street Naming.** Subject to compliance with Applicable Laws, the City shall cooperate with Cubs to allow Cubs to name all streets, roadways and pedestrian thoroughfares within the Spring Training Facilities Site including any new streets, roadways and pedestrian thoroughfares, which naming shall be through the term of this Agreement. Notwithstanding the foregoing, Cubs shall not have the right to change the name of Riverview Drive or to name the Connector Path (as depicted on Exhibit “A”).

2.6. **Option Agreement Covering Portions of Premises.** Cubs agree and acknowledge that portions of the premises subject to this Agreement and presently depicted on Exhibit “A” as for Public Parking (the “**Option Property**”), are subject to an option agreement (“**Option**”) from the City in favor of a private developer, as optionee (“**Optionee**”). Cubs consent to the grant of the option to Optionee, provided, in the event the Option is exercised and any portion of the Public Parking is displaced from the Spring Training Facilities Site, the City shall be obligated to provide replacement Public Parking at a location on the City Site other than the Stadium Site, the Team Facilities Site or the City Fields Site.

2.7. **Stadium Apron.** The Parties agree and acknowledge, during the Term, the City may lease, or grant other possessory rights to (*e.g.*, license), the Stadium Apron to Cubs or to a Third Party approved by Cubs, during the Spring Training Season. If Cubs elect not to license the Stadium Apron, and at all other times than the Spring Training Season, the City may, in its sole discretion, lease or grant other possessory rights or license in or to the Stadium Apron to any Third Party; provided, however, that the consideration for such lease or license during the Spring Training Season shall not be less than the consideration required from Cubs, unless the Third Party is a public, civic or nonprofit organization or entity (*e.g.*, the Chamber of Commerce, CVB, etc.) for its own use.

2.8. **Cubs Property.** For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, the Parties agree and acknowledge any removable equipment, facilities, fixtures, items or other property purchased and paid for by Cubs shall be and remain the property of Cubs at all times during and after the Term or other expiration of this Agreement and nothing herein is intended to, or shall, grant to the City any right to or interest in any such equipment, facilities, fixtures, items or other property purchased and paid for by Cubs.

3. **Term.** The City will deliver possession of the Spring Training Facilities to Cubs upon Completion of Construction and Acceptance of Possession as defined in the Development Agreement (“**Delivery**”). It is anticipated that Delivery will occur prior to the Commencement Date, as defined below. Notwithstanding an earlier date of Delivery, the Term will commence on February 1 of the calendar year in which the first Spring Training Season commences following the initial Completion and Acceptance of Possession of the Spring Training Facilities and other Improvements as provided for in the Development Agreement (“**Commencement Date**”) and, unless earlier terminated as expressly provided for in this Agreement, will expire on the 10th day after the last day of the 50th Spring Training Season following the Commencement Date (“**Term**”); provided, except as otherwise expressly provided herein, the City and Cubs shall be fully bound by and obligated under this Agreement from and after Delivery. At the time of Delivery, the existing lease agreement between the City and Cubs, dated March 31, 1996 (as the same has been amended from time to time), for HoHoKam Stadium and Fitch Park, shall automatically be terminated (except for obligations of indemnity that expressly survive termination).

4. **Rent, Fees and Other Benefits to City.**

4.1. **Rent.** During the Term, Cubs shall pay rent (“**Rent**”) to the City, in advance, for Cubs’ use of the Spring Training Facilities as set forth in this Agreement, which Rent has been determined based on the fair market value of the Stadium Site as agreed to by the Parties after appraisals were done (“**Fair Market Value**”).

(a) **Payment Schedule.** The Rent shall be due and payable in thirty (30) annual installments, according to the schedule attached hereto as **Exhibit “F”**, commencing with the first (1st) annual installment being due and payable on or before the Commencement Date with each annual installment of Rent thereafter being due and payable on or before February 1 of each calendar year through the thirtieth (30th) Lease Year following the Commencement Date. For the avoidance of doubt, the Parties agree and acknowledge the thirty (30) annual installments of Rent payable pursuant to this Section 4.1(a) constitutes the entire Rent for the entire Term. Further for the avoidance of doubt, the Parties agree and acknowledge that, if Cubs terminate this Agreement at any time after the thirtieth (30th) Lease Year following the Commencement Date, no refund or reimbursement of any portion of Rent previously paid shall be made to Cubs by the City.

(b) **Prepayments.** Cubs may prepay the Rent at any time during the first thirty (30) years of the Term, in which event the prepayment amount shall be the Rent otherwise payable during the first thirty (30) years discounted to present value using a discount rate of five (5) percent.

(c) **Late Payments.** Cubs shall pay default interest on the full amount of any Rent installment not timely paid to the City, from the date on which such Rent installment was due and payable until paid in full, at the published Wall Street Journal U.S. Prime Rate plus five (5) percent (“**Default Rate**”).

(d) **Proration of Rent.** Upon termination of this Agreement for any reason other than Cubs’ Default, the Rent shall be pro-rated, and the City shall promptly refund to Cubs any Rent which has been paid or prepaid and is attributable to the period which otherwise would have constituted the remaining Term.

4.2. **Electric Power Services; Water and Sewer.** During the Term:

(a) **Stadium.** Cubs shall be exclusively responsible to pay for all electric power service provided to the Stadium, including reasonable electric power service provided for City Stadium Events; provided, however, the City shall pay the cost of any electric power service provided for a City Stadium Event in excess of the cost that would be incurred for a typical, comparable Stadium Event.

(b) **Team Facilities.** The City shall be exclusively responsible to provide, at its expense, all electric power services to the Team Facilities sufficient to support the operation and use thereof as contemplated by this Agreement, provided Cubs shall reimburse the City, within thirty (30) days of receipt of the City's invoice therefore (with reasonable supporting documentation including copies of the prior year's monthly statements for electric power services), for any charges paid by the City for such electric power service in excess of the Maximum City Electric Power Contribution, as defined below.

(1) **Maximum City Electric Power Contribution.** For the first two years of the Initial Term, Cubs shall reimburse the City for any charges paid by the City for electric power service provided to the Team Facilities during the preceding year, in excess of \$294,259.00, which the Parties acknowledge and agree is the charge for one-and-a-half (1.5) times the average annual charges for electric power service provided to HoHoKam Stadium and Fitch Park in calendar years 2008 and 2009 plus the CPI increase noted below (“**Maximum City Electric Power Contribution**”).

(2) **CPI Increase.** The Maximum City Electric Power Contribution shall be increased annually, if applicable, in the first two years of the Term by an amount equal to the percentage increase, if any, in the Consumer Price Index—All Urban Consumers U.S. All Items, 1982-84=100 (“**CPI**”) during the previous year of the Term. By way of example, if the percentage increase in the CPI during the first year of the Term were 3%, the Maximum City Electric Power Contribution during the second year of the Term would be increased by 3%, to \$303,087.00 (that is, \$294,259.00 x 103%).

(3) **Annual Cost Adjustment.** Following the first two years of the Initial Term, the Maximum City Electric Power Contribution shall be adjusted to the amount which reflects the average annual charges for electricity actually used during the first two years of operation of the Team Facilities, adjusting for any equipment or other uses added or removed, which adjusted amount shall thereupon be the Base Maximum City Electric Power Contribution. Thereafter, the Base Maximum City Electric Power Contribution will be increased or decreased, as applicable, each year during the remainder of the Term to reflect the average annual cost of electricity actually used during the preceding two years of operation of the Team Facilities.

(c) **City Fields.** Notwithstanding the foregoing or anything in this Agreement to the contrary, the City shall pay for all electric power services to the City Fields.

4.3. **Water and Sewer.** Although the City shall pay for and provide all water and sewer service for the Spring Training Facilities as provided in Section 5.4, Cubs shall pay the cost (if any) of water and sewer service provided to the Stadium and Team Facilities in excess of the amount of such water and sewer service used in connection with comparable spring training facilities in the Cactus League.

4.4. **Security; Public Safety Services.** Cubs shall pay the amount set forth in clause (b) below for all security and traffic control services necessary to support operations on the Stadium Site during Stadium Events and during Cubs' operation and use of the Team Facilities. Excepting only the services which Cubs are responsible to provide, the City shall provide, at no cost to Cubs except the Public Safety Services Fee, all Public Safety Services required to support the operation and use of the Stadium, Team Facilities and City Fields, provided the Parties acknowledge a lower level of services is required for Stadium Events where attendance of less than capacity is expected. Without limitation of the generality of the foregoing:

(a) **"Public Safety Services"** means all security, emergency services, traffic control, police, fire, and other public services customarily provided by the City for public events which are similar in nature and scope to the Spring Training baseball games and other Stadium Events, to City standards.

(b) **"Public Safety Services Fee"** means the amount Cubs shall pay to the City for public Safety Services: (i) for each Spring Training Stadium Event, which is the sum of \$1,500 (which shall be increased by \$300 per Spring Training Stadium Event every five (5) years during the Term, as extended), and (ii) for each non-Spring Training Stadium Event, which is the standard fee charged for such services, as determined from time to time by the City's Police Department (or comparable agency). Such amounts shall be paid in advance of each Stadium Event.

4.5. **Maintenance and Repair of Stadium and Team Facilities.** During the Term:

(a) **Cubs Maintenance and Repair.** Cubs shall be exclusively responsible to provide and pay for all Maintenance and Repair of the Stadium and the Team Facilities, except (i) any cost arising from the willful misconduct of either Party which shall be the sole responsibility of such Party, (ii) the City's share of any Capital Expenditures as defined in Section 1.9 and incurred pursuant to Section 4.5(b), and (iii) Capital Improvements, which will be paid in accordance with Article 7. Notwithstanding the foregoing, and for the avoidance of doubt, Cubs may in its discretion elect to provide and pay for any equipment, fixtures, facilities or other items, at any time or from time to time, as part of Maintenance, Repair or otherwise.

(1) **"Maintenance"** means, for the purposes of this Agreement, all actions, whether or not periodic in nature, to maintain the Stadium and Team Facilities so as to preserve the continuous operational status of all systems, equipment and other components thereof over their reasonably anticipated useful life including all manufacturer-recommended periodic inspections and testing of systems, equipment and other components to determine operational status and identify any necessary maintenance thereof; all preventive or routine maintenance stipulated in operating manuals for systems, equipment and other components as regular, periodic maintenance (including the HVAC system, *e.g.*, cleaning, lubricating and changing of air filters); groundskeeping including mowing, seeding, fertilizing and spot resodding; cleaning; touch-up painting; replacing worn or broken parts (*e.g.*, light bulbs, circuit breakers and the like); trash collection and disposal; pest control; and repair or replacement

of discreet and immaterial occurrences of cracked or disintegrated concrete, broken pipes or leaking roof or sections thereof.

(2) “**Repair**” means, for the purposes of this Agreement, any work, generally non-recurring and non-periodic in nature, to repair or restore any system, item of equipment or other component of the Stadium or Team Facilities to the same operational status or condition which existed before it was non-working, damaged or destroyed including, but not limited to, replacements or restorations of furnishings, fixtures or equipment with similar assets, whether or not depreciated, which may include Capital Expenditures but shall not include Capital Improvements.

(b) **Capital Expenditures.** No Capital Expenditure as defined in Section 1.9 shall be made without the mutual consent of the Parties, which consent or approval shall not be unreasonably withheld. Each Repair which is the subject of a Capital Expenditure which the City is obligated to pay in whole or in part shall be procured in compliance with all Applicable Laws in respect of such procurement, and shall be administered by the City; provided, if and to the extent applicable, the City shall assist Cubs in achieving compliance with such Applicable Laws and shall promptly respond to all requests for such assistance from Cubs. Notwithstanding the foregoing or anything in this Agreement to the contrary, if a Repair is a Capital Expenditure (as defined in Section 1.9 and which the City is obligated to pay in whole or in part) in excess of Twenty Thousand Dollars (\$20,000.00) per individual system, item of equipment or other component, then the City and Cubs shall share or apportion such Capital Expenditure as follows:

(1) During Years 1 through 24, Cubs shall pay one-half of each such Capital Expenditure, and the City shall pay one-half of each such Capital Expenditure; and

(2) Notwithstanding Section 4.5(b)(1), during Years 21 through 24, Cubs’ responsibility for one-half of each such Capital Expenditure to which this provision is applicable, shall be reduced pro-ratably on the assumption that this Agreement will terminate at the end of Year 30, to the extent that Cubs’ share in Year 21 will be 90% of 50%; in Year 22, Cubs’ share will be 80% of 50%; in Year 23, Cubs’ share will be 70% of 50%, and in Year 24, Cubs’ share will be 60% of 50%; and the City shall pay the balance of the Capital Expenditure, it being expressly agreed and acknowledged that Cubs are, and shall continue to be, solely responsible for any Capital Expenditure less than Twenty Thousand Dollars (\$20,000.00) per individual system, item of equipment or other component during Years 21 through 24, inclusive; and

(3) During Years 25 through 30, the City shall be solely responsible for the cost of any Capital Expenditure to which this provision is applicable, it being expressly agreed and acknowledged that Cubs are, and shall continue to be, solely responsible for any Capital Expenditure less than Twenty Thousand Dollars (\$20,000.00) per individual system, item of equipment or other component during Years 25 through 30, inclusive; and

(4) During Year 31, and all Years thereafter during the Term, Cubs shall be solely responsible for all Capital Expenditures, and the City shall have no obligation to pay any portion of such Capital Expenditures.

4.6. **Spring Training Activities.** Without limitation of the foregoing, at all times during the Term:

(a) **Spring Training Headquarters.** Cubs shall use the Spring Training Facilities as the Cubs’ exclusive Spring Training headquarters and a site for Cubs’ player development. The foregoing includes Cubs’ player development through the Extended Spring Training Season and the Fall Instructional League Season (but not including activities related to the Cubs’ other minor league baseball

facilities), provided in the event all or a necessary portion of the Spring Training Facilities is not available due to a City Calendared Event, good cause or otherwise, Cubs may, in its sole discretion and in addition to any other remedies under this Agreement, use other off-site facilities for its player development.

(b) **Minimum Number of Home Games.** Cubs shall cause the Team to play a minimum of twelve (12) home Spring Training baseball games at the Stadium each Spring Training Season unless otherwise required by Major League Baseball or prevented by good cause (including without limitation the unavailability of the Stadium or a player strike or lockout). As City's sole and exclusive remedy related to the foregoing, if, in any Spring Training Season during the Term, Cubs play eight or fewer home Spring Training baseball games due to a player strike or lockout or other good cause, the then-current Term shall automatically be extended by one year subject to the same Rent and other terms of this Agreement otherwise applicable during such Term.

4.7. **City Suite.** Notwithstanding anything to the contrary in this Agreement and throughout the Term, the City expressly reserves the exclusive right to use one suite within the Stadium, suitable for the occupancy of thirty (30) persons, for the City's use for all Stadium Events at no rental to the City, but otherwise subject to the same terms and conditions as the Cubs standard suite license then in effect at the time of each Event (the "**City Suite**"), including, for example, the purchase of food and beverages. The City Suite shall include (at no cost or expense to the City) all applicable admissions, passes or tickets; a standard number of parking passes; printed programs for each such Stadium Event; and catering provided at standard rates. The location of the City Suite shall be the same throughout the Term and as agreed by the Parties, but shall not require any modification or new construction (*e.g.*, it will be one of the suites otherwise built as part of the Stadium and not specifically built for the City). The City's use of the City Suite is expressly restricted to Stadium Events (including City Stadium Events) and, without limitation, the Cubs shall retain the right to use the City Suite for Small-Stadium Events (*e.g.*, private parties), and neither the City Suite nor any use rights associated therewith may be sold or otherwise disposed of for revenue-producing purposes. Cubs will cause the City Suite to be cleaned after each Stadium Event and each Small-Stadium Event, as part of the Maintenance of the Stadium, at no cost to the City.

4.8. **City Signs.** Notwithstanding anything to the contrary in this Agreement and throughout the Term, if and to the extent approved as part of the Comprehensive Sign Plan, Cubs shall make available, at Cubs' cost and without any mark-up for profit: (i) at least one sign not less than either (a) four (4) feet by twenty (20) feet, or (b) seven (7) feet by fourteen (14) feet, and located inside the Stadium at a location determined by the Parties, to be available to the City for use by the City, the Mesa Convention and Visitor's Bureau or its successor or any comparable substitute entity ("**CVB**"), the Chamber of Commerce, or similar non-profit municipal groups or organizations, to promote the City (provided, however, that no such sign shall include any advertising of or for a Third Party or in any way disparage Cubs, its Affiliates or its vendors); (ii) one identification sign (in a format requested by the City) on the outside of the Stadium structure not less than one hundred and twenty (120) square feet in area and in a location reasonably approved by Cubs and the City; and (iii) two (2) City of Mesa logos as selected by the City, being one (1) on each side of the home plate; provided, however, and notwithstanding the foregoing, Cubs must approve, in writing in advance, the content, design and placement of all such signage and logos; and, provided, further, Cubs' obligations under this Section 4.8 are expressly conditioned upon the City and the CVB providing Cubs with any proposed changes to such signage and logos on or before January 1 of each calendar year during the Term, failing which Cubs' obligations to make such changes will be deemed waived until the following calendar year.

4.9. **Group Area.** Notwithstanding anything to the contrary in this Agreement and throughout the Term, the City shall have the right during two (2) Spring Training games, during each Spring Training Season, to the exclusive use and occupancy of an area (which shall be covered, if such a covered areas

exists) within the Stadium to accommodate no fewer than fifty (50) persons for non-revenue generating purposes or activities. Each year the parties will meet to determine the dates for the City's use. This usage shall be limited to use by the City (and, at the City's election, a civic or non-profit entity or organization, including but not limited to the CVB or the Chamber of Commerce).

4.10. **City Stadium Events.** The City shall be entitled to use the Stadium for at least five (5) events each year, and up to an additional five (5) events if the City's requested dates are available ("City Stadium Events"). The City shall provide Cubs not later than October 1 of each calendar year with the date or dates on which the City would prefer to conduct the City Stadium Events in the following calendar year provided, in order not to interfere with Stadium Events, City Stadium Events shall not occur on any date during the Spring Training Season or on any date on which Cubs have previously scheduled a Stadium Event or Small-Stadium Event on such date (*e.g.*, an event scheduled more than one year in advance); provided, further, unless Cubs provide the City with notice of Cubs' objection to the City's list of preferred dates within thirty (30) days of receipt of such list, the City's proposed dates for all City Stadium Events which have not been objected to shall be deemed approved, subject to the foregoing limitations. The City may charge an admission or entry fee (or collect other revenue therefrom) for such City Stadium Events that is commensurate with the admission or entry fee charged by Cubs for similar or comparable events. No City Stadium Event shall be of a type or nature which could bring shame, disrepute or opprobrium upon Cubs or the Team. In addition, it is expressly agreed:

(a) City Stadium Events may not compete with revenue-generating Stadium Events or any Stadium Event which has been arranged, staged or produced by Cubs prior to its receipt of the City's proposed City Stadium Event dates or which is a recurring Stadium Event which has been staged or produced by Cubs in prior years, provided for purposes of this provision, whether a City Stadium Event competes with a Stadium Event shall be determined based on whether prior or then-scheduled Stadium Events offer similar entertainment, amusement or other activities;

(b) The City shall not use or authorize the use of the Stadium, or any portion thereof, in any manner which would damage any portion of the Stadium, including without limitation any Playing Field or have a material detrimental physical impact on the Stadium or any portion thereof;

(c) The City shall: (i) take such measures as are reasonably requested by Cubs to prevent damage to the Stadium or any portion thereof, and (ii) be and remain solely responsible for repairing and restoring the Stadium to its condition prior to the City Stadium Event including without limitation repair of any damage or destruction to the Stadium or any portion thereof (including, without limitation, the Facilities Equipment therein) before, during and following each City Stadium Event;

(d) Any temporary signage or marketing materials to be used or displayed at the Stadium in connection with a City Stadium Event may not cover signage placed at or on the Stadium (including any signage placed at or on the Stadium by Cubs or its sponsors) or promote any entity which is a competitor of Cubs or its sponsors, shall not be permanently affixed and shall be removed promptly by the City at the conclusion of the City Stadium Event;

(e) Following each City Stadium Event, the City shall return the Stadium inclusive of the Stadium Parking to Cubs in the same condition as prior to the City Stadium Event, subject to reasonable wear and tear;

(f) The City may provide services (including but not limited to catering) through use of its own staff or by concessionaires with whom the City may independently contract, for any City Stadium Event, and may collect and retain any revenue generated in connection with such services, provided, to the extent the City does not provide or contract for such services, Cubs shall be entitled to provide or

contract for such services and collect and receive all revenue from such service, *e.g.*, concessions, not provided by the City;

(g) For each City Stadium Event, the City shall control all parking required for such City Stadium Event on the Public Parking areas and the Stadium Parking, and Cubs shall not be entitled to collect any revenue or charge any fee in connection with such parking. The City, in its sole discretion, may elect to charge a fee for parking on the Public Parking areas for a City Stadium Event, in which event the City shall retain all parking revenue generated from such fee in connection with such City Stadium Event; and

(h) There shall be no Public Safety Services Fee owing from Cubs to the City in connection with any City Stadium Event.

4.11. **Reserved Parking.** Cubs shall provide to the City, throughout the Term and at no cost or expense to the City (and in addition to any other parking rights, privileges or passes described in this Agreement) five (5) designated and reserved parking spaces for exclusive use at all times by the City and its designated representatives and invitees. The location of the five parking spaces described in this Section 4.11 shall be as close as possible to the Stadium Site as determined reasonably by Cubs and the City.

4.12. **Public Service Announcements.** Beginning the first Lease Year in which Spring Training is conducted by Cubs at the Spring Training Facilities and continuing for each Lease Year thereafter, Cubs shall, at the City's request, reasonably provide players or staff to appear in the production of two (2) public service announcements in video format ("**Public Service Announcement(s)**") directed at youth crime prevention, youth educational development and youth sports and recreational participation. Such Public Service Announcements shall feature players of Cubs or other publicly recognizable personnel of Cubs, the selection of such players and/or personnel to be made in the sole and absolute discretion of Cubs. All costs and expenses associated with the production, reproduction, distribution and display of such Public Service Announcements, including without limitation the payment of any talent fees and/or health and retirement benefits contributions required by any applicable union agreements (*e.g.*, AFTRA and SAG) shall be the responsibility of and borne solely by the City. Information pertaining to the amount of any talent fees and/or health and retirement benefits contributions required by any applicable union agreements shall be provided to the City upon request for the purposes of the City determining whether to request the Public Service Announcements be produced.

4.13. **Advertising and Promotion.** If during the Term, Cubs has any unsold advertising display space (*e.g.*, billboards, outfield signs, etc.) at the Stadium Site, then, subject to Cubs' prior reasonable approval as to the content, design, frequency of display and placement of any such advertisements or promotional materials, and at no cost to Cubs, the City shall be permitted to have one additional public service advertisements or promotional materials and information to market or promote the City (but not the products, services or brand of any third party) displayed at the Stadium Site in such unsold advertising display space. Nothing contained in this Agreement shall require Cubs to remove or substitute any paid advertisement or promotional materials displayed at the Stadium Site in favor of the City's advertisements or promotional materials and all revenue-producing advertisers obtained by Cubs shall have priority of use and may immediately replace any advertising display space previously provided to the City hereunder. In addition, nothing contained in this Agreement shall require Cubs to create new advertising display space or to increase the amount advertising display space, nor shall Cubs be prohibited or restricted from decreasing the amount advertising display space at the Stadium Site.

4.14. **Player Public Appearances at City Events.** Beginning the first Lease Year in which Spring Training is conducted at the Spring Training Facilities by Cubs and continuing for each Lease

Year thereafter, players and/or publicly recognizable personnel of Cubs shall make two public appearances (at no cost to the City) at area schools, youth facilities or City facilities in support of local youth programs or organizations serving children or residents of the City. The players and/or other publicly recognizable personnel of Cubs shall be selected by Cubs in its sole and absolute discretion. The times and locations of the public appearances shall be agreed upon by Cubs and the City. Locations targeted for appearances shall be selected by the City within Maricopa County with the intent to best serve youths recognized as underprivileged, at-risk or having other special needs. Cubs shall not be responsible for any costs or expenses related to such public appearances. Cubs' obligations under this Section 4.14 are expressly conditioned upon the City providing Cubs with its request for such public appearances, including the dates and other necessary information, on or before January 1 of each calendar year during the Term, failing which Cubs' obligations in such regard will be deemed waived until the following calendar year.

4.15. Stadium Event Programs. Within each printed program (or equivalent) supplied (whether gratis or for a fee) for a Stadium Event, if any, Cubs shall provide, at no cost or expense to the City or the CVB, two interior one-half pages for use by the City or the CVB to promote tourism within the City (provided all copy and art shall be supplied at the CVB's sole cost and expense) and one page for a welcome to the Spring Training Facilities (or portion thereof) by or from the Mayor, the City Council or other representatives of the City. The form and content of any such submissions shall be subject to Cubs reasonable approval, not to be unreasonably withheld, and Cubs' obligations under this Section 4.15 are expressly conditioned upon the City and the CVB providing Cubs with all applicable information (including the form and content of any such submissions) on or before January 1 of each calendar year during the Term, failing which Cubs' obligations in such regard will be deemed waived until the following calendar year.

4.16. Use of City's Name and Logo. Cubs may use the City's name, trademark, trade name and logo, at no expense to Cubs, in Spring Training-related merchandise and merchandising, subject to the City's reasonable approval of the form and context of such use (i.e., such use may not disparage, ridicule, criticize or otherwise show disrespect for the City or its officials).

5. City Maintenance and Services. During the Term:

5.1. City Fields. The City shall be exclusively responsible for operating, maintaining, repairing and replacing the City Fields in accordance with either (i) during the Spring Training Season, the Maintenance Standards, or (ii) during the remainder of the year, City standards, at its sole cost, including the cost of all labor, equipment and materials but excepting any such cost arising from the gross negligence or willful misconduct of Cubs, which shall be paid by Cubs.

5.2. City-Owned Utility Infrastructure. The City shall be exclusively responsible for operating, maintaining, repairing and replacing, in accordance with City standards and at its sole cost, the City-Owned Utility Infrastructure, as necessary to ensure the continuous provision of water (potable and, if applicable, non-potable), gas and wastewater (sanitary sewer) services to the Spring Training Facilities in a capacity sufficient to support the operation and use thereof as contemplated by this Agreement.

5.3. Public Street Improvements. The City shall be exclusively responsible for operating, maintaining, repairing and replacing, in accordance with City standards and at its sole cost, the Public Street Improvements and (if applicable) the arterial streets immediately surrounding the City Site as necessary to provide continuous access to and from the Stadium, Team Facilities and City Fields, and circulation within the Spring Training Facilities Site, in a capacity sufficient to support the uses thereof as contemplated by this Agreement.

5.4. **City-Owned Utility Services.** The City shall cause to be continuously provided to the Spring Training Facilities, in accordance with City standards and at its sole cost, all City-owned utility services, including without limitation water (potable and, if applicable, non-potable), wastewater (sanitary sewer), gas and solid waste services to the Spring Training Facilities, at a service level and capacity sufficient to support the uses thereof as contemplated by this Agreement; provided, without limitation of the foregoing, Cubs shall accept non-potable water for all landscaping needs at the Team Facilities and the City Fields, but not at the Stadium, if made available by the City.

5.5. **Electric Power Service.** The City shall cause to be continuously provided, at its sole cost, all electric power service to the City Fields, at a service level and capacity sufficient to support the uses of the City Fields as contemplated by this Agreement; provided, however, that if the City has paid for lighting for the City Fields outside of the Financing Amount, then the City has no obligation under this Section 5.5 to provide electric power service for night-time baseball.

5.6. **Other Utility Services.** The City shall cause to be continuously provided, at its sole cost, all other utility services, including telecommunications service, to the City Fields, at a service level and in amounts sufficient to support the uses thereof, as contemplated by this Agreement.

5.7. **Treatment Facility.** If the City continues at any time during the Term to operate the Treatment Facility, the City shall operate (or cause to be operated) the Treatment Facility at a standard equal to, and not less than, the current operations as to limiting noise and odor, and otherwise in compliance with all Applicable Laws.

6. **Taxes and Assessments.**

6.1. **Impositions.** With respect to taxes, assessments, fees, charges or other impositions (collectively, “**Impositions**”) applicable to or implied on the Spring Training Facilities Site, the Spring Training Facilities and other Improvements which are the subject of, and the operational and use rights granted to Cubs under this Agreement the Parties agree as follows:

(a) **Property Taxes and Assessments.** The City shall pay any ad valorem real property or equivalent tax or other Imposition including, without limitation, any lease tax or other similar Imposition (collectively, “**Real Property Tax**”) now or in the future levied, assessed or otherwise payable in respect of the Spring Training Facilities Site and, the Spring Training Facilities.

(b) **Discriminatory Impositions.** Cubs shall pay and are responsible for all federal, state, county and City Impositions including all City income and sales taxes, other than any Real Property Tax, payable on account of revenues reserved to or retained by Cubs from the operational and use rights granted to, and exercised by, Cubs under this Agreement, provided the City shall reimburse Cubs for any future Imposition by the City which solely applies to or affects Cubs, Spring Training facilities in the City, MLB Entities (including Cactus League Spring Training activities) or any professional sports/entertainment activities, venues or facilities or the fans, users or customers of same (including, without limitation, any such Imposition to recoup all or any portion of the amounts paid by the City to design and construct the Spring Training Facilities and related Improvements).

(c) **Other Impositions.** The City shall reimburse Cubs for any Imposition levied, assessed or otherwise payable in connection with the Spring Training Facilities Site and, the Spring Training Facilities which is not referenced in Sections 6.1(a)-(b) above, including any City Imposition other than as referenced in clause (b); provided, and subject to the foregoing:

(1) **Stadium Events.** The operator of any Stadium Event (and, as applicable, City Stadium Event) shall be responsible for and pay all generally applicable processing and permit fees applicable to Stadium Events (and, as applicable, City Stadium Events).

(2) **Future Construction.** The responsible Party will pay all generally applicable construction-related Impositions in respect of future construction contemplated by this Agreement, including Capital Improvements (in which event such Impositions shall be paid from the Capital Improvements Account), and otherwise by the contractor responsible for the construction, as applicable.

(d) **New City Impositions.** Notwithstanding anything to the contrary in Section 6.1(b) above, Cubs are not responsible for, and the City shall pay (or reimburse Cubs for) any new or increased City sales tax or other Imposition which is applicable to Cubs (which, for this purpose, shall include any operator, user or customer of any Stadium Event), any activity of Cubs at the Spring Training Facilities and/or any revenues retained by Cubs in relation to the Spring Training Facilities unless such Imposition is applicable to all other residents and persons conducting business in the City.

6.2. **Cubs Remedies.** Without limitation of any other remedy of Cubs:

(a) **Reimbursement.** If any Imposition which is the subject of the City's obligations under this Article 6 is paid by Cubs or otherwise collected by the applicable taxing authority, including the City, the City shall pay to Cubs an amount equal to any such payment or collection within thirty (30) days of the City's receipt of a statement therefore, together with reasonable supporting documentation establishing payment or collection; and/or

(b) **Reduction of Term; Offset Right.** If the City fails to timely pay to Cubs any amount owing by City under the preceding clause, then, at Cubs election, Cubs may offset or credit the amount of any such unpaid Imposition against any other amounts payable by Cubs to the City under this Agreement, including Rent and Cubs' share of any Capital Expenditure or Capital Improvements cost (as applicable).

6.3. **Survival of Termination.** The provisions of this Article 6 shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

7. **Capital Improvements.** During the Term, Capital Improvements (as defined in Section 1.10) in respect of the Spring Training Facilities shall be undertaken and paid for as follows:

7.1. **Scheduled Capital Improvements to Spring Training Facilities.** Upon the commencement of each of the 10th, 20th and 30th years of the Term (provided, with respect to Scheduled Capital Improvements to be made during the 30th year of the Term, Cubs has provided written notice to the City on or before the expiration of Year 27, that Cubs is waiving its right pursuant to Section 11.2 of this Agreement through and including Year 40), the Parties shall evaluate the Spring Training Facilities to identify, and the City shall cause to be promptly designed, engineered, permitted, purchased, installed and/or constructed, as applicable, through Completion, all Capital Improvements ("**Scheduled Capital Improvements**").

(a) **Interim Capital Improvements to Stadium and Team Facilities.** If Cubs determine Capital Improvements for the Stadium or Team Facilities are necessary at times, other than the Scheduled Capital Improvements ("**Interim Capital Improvements**"), Cubs shall provide notice to the City and the City shall cause to be promptly designed, engineered, permitted, purchased, installed and/or constructed, as applicable, through Completion such Interim Capital Improvement in a timely manner.

(b) **Capital Improvements to City Fields.** The City shall be obligated, at its sole cost, for all Capital Improvements to the City Fields including, without limitation, any Capital Improvements associated with the repair, restoration or rebuilding of the City Fields upon any damage or destruction of the same. If Cubs determine an Interim Capital Improvement for City Fields is desired, upon the City's approval of such Interim Capital Improvement, Cubs shall pay for and cause such Interim Capital Improvement to be promptly designed, engineered, permitted, purchased, installed and/or constructed, as applicable, through timely Completion.

(c) **Cubs Consent Required.** Without limitation of the foregoing, the City may not undertake any Capital Improvements to the Stadium or Team Facilities without the prior consent of Cubs, which may be withheld at Cubs' sole discretion, or to the City Fields without the prior consent of Cubs, which shall not be unreasonably withheld.

7.2. **Capital Improvements Account.** The City shall establish a special account to facilitate the computations and payments provided for in this Agreement (the "**Capital Improvements Account**"). Except as noted below, the Capital Improvements Account may be in the form of a bookkeeping entry maintained with the regular accounts of the City.

(a) **Funding Obligations of Parties.** Following the initial Completion of the Spring Training Facilities, Capital Improvements will be funded, first, from funds remaining and unexpended from the Financing Amount (as such term is defined in the Development Agreement), if any, and, if and to the extent such funds are insufficient to pay the costs of any Capital Improvement, from contributions by the Parties in accordance with their respective Capital Improvement payment obligations, as follows:

(1) **Scheduled Capital Improvements.** In addition to its obligations in respect of the City Fields pursuant to Section 7.1(b), the City shall be obligated to pay the entire cost of all Scheduled Capital Improvements identified pursuant to Section 7.1 above, for which there are then insufficient funds in the Capital Improvements Account or otherwise available from Third Parties.

(2) **Interim Capital Improvements.** Prior to the 10th year of the Term and during the 11th through 19th years of the Term, and the 21st through 29th years of the Term, respectively, the City and Cubs shall each be obligated to pay one-half the cost of any Interim Capital Improvements to the Stadium and Team Facilities which are identified and made during such periods and for which there are then insufficient funds in the Capital Improvements Account or otherwise available from Third Parties.

(3) **Exceptions.** Notwithstanding the foregoing: (i) any Capital Improvements required as a result of the willful misconduct of either Party shall be the sole responsibility of such Party, and (ii) funds in the Capital Improvements Account may be used to pay for Capital Improvements to the City Fields with the prior consent of Cubs, which shall not be unreasonably withheld or delayed so long as such Capital Improvements are related to Cubs Spring Training activities.

(b) **Accounting.** The Capital Improvements Account shall be a bookkeeping record or entry of the City, except as hereinafter provided.

(1) **Deposits.** Consistent with the foregoing, the City may account for any funds required to be contributed by the City to the Capital Improvements Account with respect to Capital Improvements and Capital Expenditures by way of journal entry; provided, however, the City shall deposit funds equal to any funds contributed by Cubs for Capital Improvements pursuant to Section 4.5(b) and this Article 7 in a separate account at a bank or other financial institution for investment, as hereinafter provided.

(2) **Reconciliation.** The first deposit to the separate account at a bank or other financial institution (if any) shall be made within one hundred and twenty (120) days following the initial Completion of the Spring Training Facilities, during which time the City shall prepare and provide Cubs with a copy (and reasonable supporting documentation for) a final accounting of all cost items reflected in the Project Budget, including all such cost items incurred and paid from the Financing Amount (as such term is defined in the Development Agreement), separately identifying all such cost items incurred and eligible for payment from the Financing Amount; whereupon, the City shall promptly deposit, in the separate account at a bank or other financial institution, funds equal to that portion of the Financing Amount (if any) not expended to Complete the Spring Training Facilities, subject in all events to the terms or requirements of bonds sold to raise all or a portion of the Financing Amount.

(3) **Contributions.** Additional credits and deposits, as applicable, shall be made as and when the Parties are required to and contribute funds pursuant to Section 4.5(b) and this Article 7, and debits (as applicable) shall be made as and when payments are disbursed to pay the costs of Capital Improvements and Capital Expenditures pursuant to Section 4.5(b) and this Article 7. The City shall deliver to Cubs, on or before December 31 of each calendar year during the Term and, also, within fifteen (15) days following the last day of any month during which credits/deposits and/or debits/withdrawals in respect of the Capital Improvements Account occur, a summary statement of the Capital Improvements Account together with copies of the account statements from the bank or other financial institution with, in each instance, reasonable supporting documentation reflecting the basis for all credits/deposits and debits/withdrawals reflected in such statements.

(c) **Investment of Funds.** At any time funds for Capital Improvements or Capital Expenditures are required to be deposited in an account with a bank or financial institution, as hereinabove provided, such funds shall be invested in federally-insured interest-bearing instruments or accounts except as otherwise mutually approved by the Parties and such funds shall remain at all times available upon demand with all interest or other earnings to accrue to the benefit of the Capital Improvements Account.

(d) **Reimbursement of Capital Improvements Account.** If the cost of any Capital Improvement or Capital Expenditure is paid with funds from the Capital Improvements Account or the bank or other financial institution account (as applicable) and either or both Parties are subsequently reimbursed for such cost by a Third Party, under any applicable warranty, insurance or otherwise, such Party shall promptly provide notice to the other Party and deposit a sum equal to the total reimbursement amount into the bank or other financial institution account.

(e) **Pledge of Capital Improvements and Capital Expenditures Account.** The City hereby pledges to Cubs all funds in the Capital Improvements Account and bank or other financial institution account (if any) from time to time, and acknowledges this pledge shall be a lien on such funds, to secure the City's timely payment and performance of its obligations under this Article 7. It is expressly acknowledged and agreed the funds pledged hereunder consist of solely the required contributions of the City to the Capital Improvements Account and such bank or other financial institution account, accordingly, and this obligation does not represent or constitute, and shall not represent or constitute, a debt or a direct or indirect pledge of the full faith and credit of the City, or of the State of Arizona, or of any political subdivision or agency thereof.

7.3. **Procurement of Capital Improvements and Capital Expenditures.** All contracts for the design, engineering, permitting, purchase, installation or construction, as applicable, of Capital Improvements and Capital Expenditures must be procured in accordance with Applicable Laws. Without limiting the foregoing:

(a) **City Performance.** If the City is responsible for performing, or causing to be performed, Capital Improvements or Capital Expenditures work, the City (in consultation with Cubs) shall select the contractors and vendors for such Capital Improvements or Capital Expenditures in accordance with Applicable Laws including City standard protocols, including obtaining:

(1) **Bonds.** Payment and performance bonds from all contractors performing Capital Improvements or Capital Expenditures work; and,

(2) **Warranties.** At a minimum, one-year warranties from all Third Party contractors performing Capital Improvements or Capital Expenditures work, provided the cost of any warranties obtained hereunder by the City (or Cubs) shall be a Capital Improvements or Capital Expenditures cost and paid using funds from the Capital Improvements Account.

(b) **Third-Party Beneficiary.** Cubs shall be named as a third-party beneficiary of, and as an additional insured and indemnified party in, all contracts for Capital Improvements and Capital Expenditures entered into by the City and the form of such contracts (and any material deviations from the same) shall be subject to Cubs' prior approval. Cubs shall also be named as a beneficiary of and shall have the right to request the City enforce its rights under any contract or agreement, including under any payment and performance bonds, warranties or insurance coverage obtained in connection with any such contract or agreement, in respect of any and all Capital Improvements and Capital Expenditures work undertaken by the City, provided, prior to exercising its rights as a third-party beneficiary, Cubs shall provide the City with notice and a reasonable opportunity to enforce the contract or agreement at issue. The City agrees to cooperate with Cubs in the exercise of its rights as a third-party beneficiary including pursuing claims under payment and performance bonds, warranties and insurance coverage. Any exercise by Cubs of its rights as a third-party beneficiary shall not relieve the City of any of its obligations hereunder.

(c) **Performance of Work.** Regardless of whether Cubs or the City is responsible for procuring or supervising any contract for the design, engineering, permitting, purchase, installation and/or construction of any Capital Improvement or Capital Expenditures, the responsible Party shall cause the procurement and work (as applicable) to be prosecuted to Completion as promptly as possible, in a good and workmanlike manner, and all contracts or other agreements for such work shall require the contractor(s) to promptly correct all defects in workmanship and materials used in such work. All such work shall be conducted in a manner so as to eliminate, or if elimination is not possible, to minimize, interference with Cubs' operation and use of the Spring Training Facilities and Public Parking, including all such work shall be scheduled, whenever possible, for commencement and Completion at times other than during any Spring Training Season.

7.4. **Disposition of Facilities Equipment.** Without the prior written consent of Cubs, the City shall not remove or dispose of any Facilities Equipment from the Stadium or Team Facilities in connection with any Capital Improvements pursuant to this Article 7.

7.5. **Objections and Disputes.** Each Party shall keep the other Party reasonably informed of the status of such Party's activities with respect to all material matters which are the subject of this Article 7 including, without limitation, any material occurrences or issues relating to the Capital Improvements Account, the bank or other financial institution account or the design, engineering, permitting, purchase, installation or construction, as applicable, of any Capital Improvements or Capital Expenditures contemplated by this Agreement. If a Party objects to, or wishes to contest, any action of the other Party or occurrence under this Article 7, including any decision or accounting of the City relating to a matter which is the subject of this Article 7, such Party may invoke the provisions of Section 9 and provide an

Objection Notice to the other Party, whereupon the Parties shall proceed to resolve such objection or dispute as provided in Article 7.

8. **Enforced Delay in Performance for Causes Beyond Control of Party.** Whether stated or not, subject to the exclusions set forth below, all periods of time in this Agreement are subject to this Section 8 and the (as applicable) grace and cure periods in Section 10.1. Subject to the foregoing, neither the City nor Cubs, as the case may be, shall be considered in Default under this Agreement in the event of a delay due to causes beyond its control and without such Party's fault, failure to comply with Applicable Laws or its negligence (an "**Enforced Delay**"), including, but not limited to: (1) acts of God, acts of a public enemy, acts of terrorism, fires, floods, unusually severe weather, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, acts of the federal or state government, and acts of Third Parties (including contractors, subcontractors, and suppliers), resulting in delay beyond the reasonable control of the Party; and (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (but not including the effect of petitions for initiative or referendum). In the event of the occurrence of any Enforced Delay, the time or times for performance of the obligations of the Party claiming Enforced Delay shall be extended for the period of the Enforced Delay, provided the Party seeking the benefit of the provisions of this Section 8 shall, reasonably promptly after such Party knows or reasonably could have known of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay. Notwithstanding the foregoing, Enforced Delay shall not include any delay in payment or performance due to general economic or market conditions, financial infirmity or financial decisions made by the Party seeking the benefit of an Enforced Delay, the unavailability for any reason of financing or financing on terms acceptable to the City, any act that constitutes a Default of the Party seeking the benefit of an Enforced Delay, or the unavailability for any reason of particular materials or supplies, contractors, subcontractors, vendors, investors or lenders desired by the Party seeking the benefit of an Enforced Delay.

9. **Dispute Resolution.** The Parties shall cooperate, diligently and in good faith, to resolve all matters under this Agreement, provided if either Party believes the other Party is not making required payments or performing in accordance with the terms and conditions of this Agreement or performing in a commercially reasonable manner in connection with any matter, such Party ("**Objecting Party**") may invoke the provisions of this Section 9 and provide notice to the other Party ("**Objection Notice**") identifying the matter objected to with reasonable specificity. In such event, within three business days of the other Party's receipt of such Objection Notice, representatives of the City and Cubs shall meet, telephonically or in person, in an effort to resolve such objection in accordance with the issue resolution ladder attached as Exhibit "H". If such objection has not been resolved to the satisfaction of the City and Cubs at the conclusion of the issue resolution ladder process, then either Party may invoke the dispute resolution process delineated on Exhibit "H-1" attached hereto, by written notice to the other Party.

10. **Default and Remedies.**

10.1. **Default and Cure Period.** If the City or Cubs fails to perform its or their obligations under this Agreement (or any other contract or agreement between the City and Cubs) and such failure continues for a period of thirty (30) days after notice thereof from the other Party in accordance with this Agreement (the "**Cure Period**"), such failure shall constitute a default under this Agreement (a "**Default**"). Notwithstanding the foregoing, if such Default is a non-monetary Default and more than thirty (30) days would reasonably be required to perform such action or otherwise comply with this Agreement, the Cure Period may be extended by such additional time as may be reasonably necessary for the Party in Default (the "**Defaulting Party**") to cure such Default, not exceeding an additional 120 days, provided the Defaulting Party commences performance or compliance within the initial Cure Period and

thereafter diligently and in good faith pursues completion of such performance or compliance in a manner calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation of the Defaulting Party. Any notice of an alleged Default (“**Default Notice**”) shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured. If a Default is not cured within the Cure Period (as extended, if applicable), the non-Defaulting Party shall have the remedies set forth in Section 10.2.

10.2. **Remedies.** Whenever a Default occurs and is not cured within the Cure Period (as extended, if applicable), the remedies of the non-Defaulting Party shall consist of and be limited to the following except as provided in Section 10.3:

(a) **Damages.** The recovery of the non-Defaulting Party's actual damages as of the time of entry of judgment, the Parties expressly waiving any right to seek consequential, punitive, multiple, exemplary or other damages, of any kind or nature, except actual out-of-pocket damages, provided, in the event of a payment Default, the non-Defaulting Party shall be entitled to interest on such payment amount at the Default Rate from the date of Default until paid in full;

(b) **Specific Performance.** In such event, it is an appropriate remedy and the non-Defaulting Party may seek specific performance, an injunction (whether characterized as mandamus, injunction or otherwise), special action, declaratory relief or other similar relief requiring the Defaulting Party to undertake and to fully and timely perform its obligations under this Agreement;

(c) **Declaratory Relief.** Without limitation of the foregoing, it is an appropriate remedy and Cubs may seek specific performance, an injunction, special action, declaratory relief or other similar relief in the event of the City's failure to pay or disburse amounts due and payable to Third Parties under any agreement or contract entered into or awarded for or relating to Capital Improvements as provided for in this Agreement;

(d) **Offset.** Without limitation of the foregoing, if the City is the Defaulting Party, it is an appropriate remedy and Cubs may seek the offset of its actual damages against Rent and other amounts payable to the City hereunder.

(e) **Remedies Cumulative.** All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

10.3. **Termination upon Default.** In addition to the remedies provided in Section 10.2, upon the final adjudication or, if applicable, final determination under the dispute resolution process provided for in this Agreement a Default has occurred and such Default is not cured within a period following such adjudication or determination, as applicable, equal to the Cure Period (as extended, if applicable), the non-Defaulting Party may provide notice (“**Pre-Termination Notice (Default)**”) to the Defaulting Party of such non-Defaulting Party's intention to terminate this Agreement, specifying the manner in which the Default may be satisfactorily cured. In such event, within ten (10) business days of the Defaulting Party's receipt of such Pre-Termination Notice (Default), the Mayor of the City and the Chairman of the Cubs shall meet, telephonically or in person, in an effort to resolve such Default to the satisfaction of the non-Defaulting Party. If such Default cannot be resolved to the satisfaction of the non-Defaulting Party within sixty (60) days after the Defaulting Party's receipt of the Pre-Termination Notice (Default), the non-Defaulting Party shall have the right to terminate this Agreement by providing notice to the Defaulting Party (“**Termination Notice (Default)**”) whereupon this Agreement shall terminate, provided (i) if the City is the Defaulting Party, at Cubs' election, such termination shall not occur until the 10th day after the last day of the Spring Training Season occurring in the year of the Term during which such Termination

Notice (Default) is provided or the 10th day after the last day of the Spring Training Season occurring in the succeeding year, whichever Cubs elect; (ii) if Cubs is the Defaulting Party, such termination shall not occur until the 10th day after the last day of the Spring Training Season occurring in the year of the Term during which such Termination Notice (Default) is provided, in which event the City shall be entitled to all net revenues collected at the Stadium (including Public Parking) following the provision of the Termination Notice (Default); and (iii) such termination shall not act to release the Defaulting Party from any of its payment or performance obligations in respect of the matter which is the subject of the Default, or limit the non-Defaulting Party's right to recover its actual damages on account of such Default, which shall expressly survive termination of this Agreement pursuant to this Section 10.3.

10.4. **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by such Defaulting Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by the doctrines of waiver.

11. **Early Termination.** Notwithstanding the foregoing or anything in this Agreement to the contrary, Cubs shall have the right and option to terminate this Agreement as hereinafter provided:

11.1. **MLB Minimum.** If fewer than five (5) other Major League Baseball Clubs participate in Cactus League Spring Training activities during any one (1) consecutive year during the Term, Cubs may provide notice to the City of its election to suspend this Agreement, without cost to Cubs or payment of any sums due during such time (and during which time no portion of the Spring Training Facilities shall be available for use by Cubs), until such time as the City and Cubs reasonably determine or when more than five (5) MLB teams participate in Cactus League Spring Training activities; or if fewer than five other Major League Baseball teams participate in Cactus League Spring Training activities during any three (3) consecutive years during the Term, Cubs may provide notice to the City of its election to terminate this Agreement, whereupon this Agreement shall terminate on the 10th day after the last day of the Spring Training Season occurring in the year of the Term in which Cubs provide such notice or, at Cubs' election, the 10th day after the last day of the Spring Training Season occurring in the succeeding year. For the purposes of this Section 11.1, if participation has been suspended because of a players' strike, a lock-out, or other actions by MLB, owners of MLB Clubs, or Cubs, then this Section 11.1 shall not apply.

11.2. **Early Termination.** Following the 25th or later Spring Training Season during the Term, Cubs may provide notice to the City of its election to terminate this Agreement, specifying the termination date which shall be: (i) if such notice is given during a Spring Training Season, on the 10th day following the end of the then-current Spring Training Season; or (ii) if notice is given after a Spring Training Season, then on the 10th day after the date of the notice; provided, in either such event, Cubs shall pay to the City the sum of \$1,000,000 for each Spring Training Season which would have occurred subsequent to the termination date and prior to the last day of the thirtieth (30th) Spring Training Season following the Commencement Date (the "**Early Termination Payment**"). The Early Termination Payment shall be payable to the City annually, on or before the date which is thirty (30) days following the last day of each Spring Training Season which would have occurred subsequent to the early termination date and prior to expiration of the thirtieth (30th) Spring Training Season following the Commencement Date; provided, however, the City shall use commercially reasonable efforts to find a replacement Major League Baseball team to conduct Spring Training activities at, and/or another Third Party to operate and use, the Spring Training Facilities and, in any such event, the Early Termination

Payment shall be reduced to \$250,000 for each calendar year subsequent to the early termination date and during which any such replacement Major League Baseball Club conducts Spring Training activities at, and/or any such Third Party operates and uses, the Spring Training Facilities, prior to expiration of the thirtieth (30th) calendar year following the Commencement Date. Notwithstanding the foregoing, no Early Termination Payment shall be required in connection with, and Cubs shall have no cost or obligation with respect to, a termination of this Agreement by Cubs pursuant to Section 10.3 or Article 12 or for any reason other than Cubs' Default or upon Cubs' voluntary termination as provided in this Section 11.2.

12. Changes in City Regulations or Applicable Laws.

12.1. **City Regulations.** If the payment or performance of any material term or condition of this Agreement, in the manner and at the times provided for in this Agreement, is prevented or materially impaired and Cubs cannot realize the practical benefits intended to be conferred by this Agreement, due to a change in City Regulations, Cubs may provide notice ("**Pre-Termination Notice (City Regulations)**") to the City of Cubs' intention to terminate this Agreement. In such latter event, within ten (10) business days of the City's receipt of such Pre-Termination Notice (City Regulations), the Mayor of the City and the Chairman of the Cubs shall meet, telephonically or in person, to determine whether the change in City Regulations can be addressed to the reasonable satisfaction of Cubs, through amendment of this Agreement or otherwise. If such change in City Regulations cannot be resolved to the reasonable satisfaction of Cubs within sixty (60) days after the Pre-Termination Notice (City Regulations), the City shall have the right to refer the matter to the dispute resolution process specified in Section 9, by providing notice to Cubs ("**Termination Notice (City Regulations)**"), for a determination of whether, in light of such change in City Regulations, Cubs can still obtain the practical realization of the benefits intended to be conferred on Cubs by this Agreement. In the event such final determination is Cubs cannot obtain the practical realization of the benefits intended to be conferred on Cubs by this Agreement as a result of the change in City Regulations, this Agreement shall terminate and the Parties shall have no further rights or obligations.

12.2. **Applicable Laws.** The Parties shall equally bear the risk of changes in or to Applicable Laws (other than City Regulations) during the Term, and changes in or to Applicable Laws (other than City Regulations) during the Term shall not be a Default of either Party under the terms of this Agreement or provide a basis for terminating this Agreement; provided, however, if the Parties are unable, in good faith and within ninety (90) days of the effective date of the change (or changes) in or to Applicable Laws, to amend this Agreement in order to provide the practical realization of the benefits intended to be provided to the Parties by this Agreement, then the Parties shall invoke the procedure in Section 8 to cause an amendment to this Agreement. Notwithstanding and without limitation of the foregoing, the Parties covenant and agree to cooperate in all reasonable measures undertaken, to oppose any such change in Applicable Laws which adversely impacts Cubs rights under this Agreement.

13. Insurance. During the Term:

13.1. Cubs' Insurance.

(a) **Liability Insurance.** Cubs shall obtain and keep in force, at Cubs' sole cost, insurance against claims for injuries to persons and damages to property based upon or arising out of the operational and use rights granted to and exercised by Cubs under this Agreement, in accordance with the insurance requirements set forth in Exhibit "I" attached hereto, naming the City as an additional insured on all liability policies in connection with the operations of Cubs. Such insurance requirements may be satisfied through MLB Entities insurance programs. A certificate which evidences proof of such coverage

shall be provided to the City starting on the date of Delivery and thereafter, not less frequently than annually, ten (10) days prior to each annual anniversary of the date of Delivery or upon request of the City.

(b) **Casualty Insurance.** Cubs shall obtain and keep in force, at Cubs' sole cost, insurance against casualty or loss to the Stadium and Team Facilities in not less than eighty percent (80%) of their full replacement value in accordance with the insurance requirements set forth in **Exhibit "I"** attached hereto, naming the City as an additional insured on all such policies. Such insurance requirements may be satisfied through MLB Entities insurance programs. A certificate which evidences proof of such coverage shall be provided to the City starting on the date of Delivery and thereafter, not less frequently than annually, thirty (30) days prior to each annual anniversary of the date of Delivery or upon request of the City.

13.2. **City Insurance.**

(a) **Liability Insurance.** The City shall provide and keep in force, at no cost to Cubs, insurance against claims for injuries to persons and damages to property based upon or arising out of the City's ownership of the Spring Training Facilities and other Improvements which are the subject of this Agreement, as well as the operational, maintenance and other rights and obligations of the City under this Agreement including with regard to City Stadium Events, in accordance with the insurance requirements set forth in **Exhibit "I"** attached hereto, naming Cubs as an additional insured on all such policies. A certificate which evidences proof of such coverage shall be provided to Cubs starting on the date of Delivery and thereafter, not less frequently than annually, thirty (30) days prior to each annual anniversary of the date of Delivery or upon request of the Cubs.

(b) **Casualty Insurance.** The City shall obtain and keep in force, at its sole cost, insurance against casualty or loss to the City Fields and other Improvements which are the subject of this Agreement, other than the Stadium and the Team Facilities, in not less than their full replacement value in accordance with the insurance requirements set forth in **Exhibit "I"** attached hereto, naming Cubs as an additional insured on all such policies. A certificate which evidences proof of such coverage shall be provided to Cubs starting on the date of Delivery and thereafter, not less frequently than annually, thirty (30) days prior to each annual anniversary of the date of Delivery or upon request of the Cubs.

(c) **City Self-Insurance.** The insurance which the City is required to obtain and maintain pursuant to this **Article 13** may be provided through self-insurance by a duly created municipal insurance trust authority created in accordance with Applicable Laws, provided, if the City elects to self-insure, the City shall furnish Cubs with a certification the City is prepared to expend such funds as may be necessary to meet the requirements of this Agreement and the City is duly authorized and has the financial capacity to self-insure for such purposes. If the City transfers ownership of any of the Spring Training Facilities to a municipal corporation, the City shall provide the same insurance coverage on behalf of such corporation.

13.3. **Allocation of Primary Liability.** Except as otherwise provided herein or agreed to by the Parties, each Party's insurance will be primary for any liability arising out of the activities, operations and responsibilities of such Party under this Agreement, provided, as to matters covered by the indemnity provisions of **Article 14** hereof, the insurance of the Party responsible for indemnification shall be the primary insurance. The Parties may agree to further specific allocations of primary liability from time to time and to purchase combined coverage policies.

13.4. **Waiver of Subrogation.** Notwithstanding anything to the contrary herein, each Party hereby releases and relieves the other Party, and waives its entire right of recovery against the other Party,

for direct or consequential loss or damage arising out of or incident to the perils covered by any property insurance carried by the other Party, or as to which the City elected to self-insure, whether due to the negligence of the released Party or its agents, employees, contractors or invitees. If necessary, all property insurance policies required by this Agreement shall be endorsed to so provide.

13.5. **Survival of Termination.** The provisions of this Article 13 shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

14. **Indemnification.**

14.1. **Indemnification by Cubs.** To the fullest extent permitted by Applicable Laws, Cubs shall indemnify, defend, pay and hold the City, its Council members, officers, agents, and employees, and each of their respective successors and assigns (collectively, the “**Indemnified City Parties**”) harmless for, from and against any and all “liabilities” (as hereinafter defined), including for any “bodily injury” (as hereinafter defined) or “property damage” (as hereinafter defined), whatsoever arising out of or resulting from (i) any breach of any representation or warranty of Cubs hereunder, (ii) the acts or omissions of Cubs or Cubs' agents, contractors directly hired by Cubs or Cubs' employees in, on or about the Spring Training Facilities, and (iii) the use, occupancy and operation of any part of the Spring Training Facilities being used, occupied or operated by, and under the control of, Cubs; provided such indemnity shall not apply to the extent any such liabilities are caused by the negligence or willful misconduct of the Indemnified City Parties nor to the extent the Indemnified City Parties have expressly undertaken the obligation to indemnify Cubs for such liabilities pursuant to the terms of this Agreement.

14.2. **Indemnification by the City.** To the fullest extent permitted by Applicable Laws, the City shall indemnify, defend, pay and hold Cubs, its Affiliates and the respective officers, agents, employees, directors, shareholders, partners of each, and the respective successors and permitted assigns of Cubs and its Affiliates (collectively, the “**Indemnified Cubs Parties**”) harmless for, from and against any and all “liabilities” (as hereinafter defined), including for any “bodily injury” (as hereinafter defined) or “property damage” (as hereinafter defined), whatsoever arising out of or resulting from (i) any breach of any representation or warranty of the City hereunder; (ii) the acts or omissions of the City, or the City's agents, contractors directly hired by the City or City employees in, on or about the Spring Training Facilities and (iii) the use, occupancy and operation of the any part of the Spring Training Facilities being used, occupied or operated by, and under the control of the City, including the Stadium during any City Stadium Event; provided such indemnity shall not apply to the extent any such liabilities are caused by the negligence or willful misconduct of the Indemnified Cubs Parties nor to the extent the Indemnified Cubs Parties have expressly undertaken the obligation to indemnify the City for such liabilities pursuant to the terms of this Agreement.

14.3. **Definitions.** As used in this Agreement, “**liabilities**” shall mean all liabilities, claims, damages, losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including reasonable attorneys and experts fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim or proceeding, whether out of court, at trial or in any appellate or administrative proceeding). “**Bodily injury**” means bodily injury, sickness or disease sustained by a person, including death resulting from any of the foregoing. “**Property damage**” shall mean physical injury to tangible property, including all resulting loss of use of the property, or loss of use of tangible property not physically injured.

14.4. **Procedure for Indemnification (Third Party Claims).** Promptly after receipt by an indemnified Party of notice of a Third Party claim against it ("**Claim**"), such indemnified Party shall, if a claim is to be made against an indemnifying Party under this Article 14, provide notice of such Claim (including, if applicable, a copy of any notice received from the Third Party) ("**Notice of Claim**") to the indemnifying Party, provided the failure to provide a Notice of Claim to the indemnifying Party shall not relieve the indemnifying Party of any liability under this Article 14 except to the extent the indemnifying Party demonstrates the defense of any such Claim has been prejudiced by the indemnified Party's failure to provide the Notice of Claim. If any Claim is made against an indemnified Party and the indemnified Party provides a Notice of Claim to the indemnifying Party, the indemnifying Party will be entitled to participate in the defense of such Claim and, if the indemnifying Party wishes to assume the defense of such Claim with counsel satisfactory to the indemnified Party and provides notice to the indemnified Party of its election to assume the defense of such Claim within thirty (30) days of receipt of the Notice of Claim (or such lesser period of time as may be necessary to avoid a default on such Claim), the indemnifying Party will not, as long as it diligently conducts such defense, be liable to the indemnified Party under this Article 14 for any fees of other counsel or other expenses subsequently incurred by the indemnified Party in connection with the defense of such Claim, other than reasonable costs of investigation and any resulting judgment; provided, if the indemnifying Party assumes the defense of a Claim: (i) no compromise or settlement of such Claim may be effectuated by the indemnifying Party without the indemnified Party's consent, which such Party may give or withhold in its sole discretion, unless (x) there is no finding or admission of any violation of Applicable Laws or any violation of the rights of any Person by the indemnified Party, (y) the indemnified Party receives a full and unconditional release from all liability as to any Claims related to the subject matter of the applicable action, and (z) the sole relief provided is monetary damages paid in full by the indemnifying Party, and (ii) the indemnified Party will have no liability with respect to any compromise or settlement of any Claim(s) effectuated by the indemnifying Party without the indemnified Party's consent. Notwithstanding the foregoing:

(a) If the indemnifying Party and the indemnified Party have potential or actual conflicting interests which would make it inappropriate for the same counsel to represent them, or the indemnified Party has defenses available to it and not available to the indemnifying Party, the indemnified Party may select one separate counsel for its representation at the indemnifying Party's expense.

(b) If any Claim is made against an indemnified Party and the indemnified Party provides a Notice of Claim to the indemnifying Party and the indemnifying Party does not, within thirty (30) days after the receipt of the Notice of Claim (or such lesser period of time as may be necessary to avoid a default on such Claim), give notice to the indemnified Party of its election to assume the defense of such Claim, the indemnified Party shall have the right to undertake, at the expense and risk of the indemnifying Party, the defense, compromise or settlement of said Claim.

(c) If an indemnified Party determines in good faith there is a reasonable probability a Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified Party may, by notice to the indemnifying Party, assume the exclusive right to defend, compromise, or settle such Claim, but the indemnifying Party will not be bound by any determination of a Claim so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

14.5. **Obligation Reduced by Other Recovery.** An indemnifying Party's duty to pay an indemnity claim shall, in each instance, be reduced by the amount the indemnified Party recovers from any Third Party including, without limitation, as a result of exercising its rights as a third party beneficiary under another contract or of receiving insurance proceeds in connection with such indemnity claim. The intent of this provision is the indemnified Party be made as whole as possible and not receive a windfall.

14.6. **Independent Provisions; Survival of Termination.** The provisions of this Article 14 are independent of, and will not be limited by, any insurance obligations in this Agreement, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

15. **Damage or Destruction. During the Term:**

15.1. **City Repair and Restoration.** If any portion of the Stadium and/or Team Facilities is damaged or destroyed by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen and subject to the receipt of insurance proceeds from any insurance purchased by Cubs pursuant to Section 13.1, the City shall promptly repair, restore, replace or rebuild the Stadium and/or Team Facilities to the condition immediately before such damage or destruction in which event the Parties shall cooperate to establish a process, similar to the provision employed under the Development Agreement with respect to the initial design and construction of the Spring Training Facilities, to administer the procurement, design, construction and Completion of such repair, restoration, replacement or rebuilding; provided:

(1) If Cubs reasonably determine such damage or destruction will materially interfere with Cubs' effective exercise of the operational and use rights granted to Cubs in respect of the Stadium and/or Team Facilities under this Agreement for more than one Spring Training Season and/or such damage or destruction will otherwise materially adversely affect Cubs' ability to use the Spring Training Facilities in the manner contemplated by this Agreement for more than two (2) Spring Training Seasons, then Cubs may provide notice to the City, within one hundred and eighty (180) days of such damage or destruction, of its election to terminate this Agreement, whereupon this Agreement shall terminate, the City shall have no obligation to repair, restore, replace or rebuild the Spring Training Facilities and all insurance proceeds shall thereupon be assigned to the City.

(2) If the City determines the cost to repair restore, replace or rebuild the Stadium and/or Team Facilities to the condition immediately before such damage or destruction will exceed the sum of all proceeds available under insurance policies required pursuant to Article 13 plus the amount of all deductibles and self-insurance coverage, and the City does not elect, in its sole discretion, to pay the excess, then the City shall provide notice to Cubs, within sixty (60) days of such damage or destruction but no later than one hundred and twenty (120) days prior to the start of the next scheduled Spring Training Season or, if such damage or destruction occurs within one hundred and twenty (120) days of the start of the next scheduled Spring Training Season, then within five days of the date of such damage or destruction, advising Cubs of such circumstance, in which event Cubs shall have the right to examine the City's basis for such determination and, by notice to the City within ninety (90) days of Cubs' receipt of the City's notice, elect to (i) dispute the City's determination, in which event Cubs may invoke the dispute resolution process provided in Section 9; or (ii) provide notice to the City of Cubs' election to terminate this Agreement whereupon this Agreement shall terminate and the City shall have no obligation to repair, restore, replace or rebuild the Spring Training Facilities. If Cubs elect to dispute the City's determination and it is finally determined the City's initial determination was correct, Cubs shall then have the right, by notice to the City within ninety (90) days of such determination, to terminate this Agreement whereupon this Agreement shall terminate and the City shall have no obligation to repair, restore, replace or rebuild the Spring Training Facilities.

(b) If any portion of the City Fields are damaged or destroyed concurrent with the damage or destruction of any portion of the Stadium or Team Facilities and the City is obligated to repair restore, replace or rebuild the Stadium and/or Team Facilities (as applicable) under this Section 15.1, the

City shall also be obligated to promptly repair, restore, replace or rebuild the City Fields, at no cost to Cubs, to a condition sufficient to provide Cubs with the same effective use of the City Fields which Cubs enjoyed immediately before such damage or destruction.

(c) Upon any such damage or destruction, and irrespective of the City's other obligations under this Section 15.1, the City shall proceed, diligently and in good faith, to raze and remove all damaged improvements which are located on the Spring Training Facilities Site.

15.2. Insurance Proceeds. If, during the Term, all or any portion of the Spring Training Facilities shall be damaged or destroyed, then:

(a) If the City is obligated to repair, restore, replace or rebuild the Spring Training Facilities pursuant to Section 15.1 or the Parties mutually agree the City will repair, restore, replace or rebuild the Spring Training Facilities, all insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Article 13 shall be paid to the City and applied to the costs of such repair, restoration, replacement or rebuilding (as applicable); or

(b) If either Party is entitled to and elects to terminate this Agreement pursuant to Section 15.1, all insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Article 13 shall be paid to the party otherwise entitled to such insurance.

15.3. Abatement of Payment Obligations. If, during the Term, all or any portion of the Spring Training Facilities is damaged or destroyed and the City is obligated to repair, restore, replace or rebuild the Spring Training Facilities pursuant to Section 15.1 or the Parties mutually agree the City will repair, restore, replace or rebuild the Spring Training Facilities, then:

(a) If such damage or destruction results in material interference with Cubs' effective exercise of the operational and use rights of Cubs in respect of the Stadium and/or Team Facilities, as contemplated by this Agreement, Cubs shall be entitled to the full abatement and suspension of its payment obligations hereunder until the Stadium and/or Team Facilities (as applicable) are repaired, restored, replaced or rebuilt and such operational and use rights are fully reinstated, consistent with the standards of this Agreement, and in such event the City shall exercise diligent, good faith efforts to assist Cubs in locating alternate facilities for Cubs use during such period of repair, restoration, replacement or rebuilding.

(b) If such damage or destruction results in material interference with Cubs' effective exercise of the operational and use rights of Cubs in respect of the City Fields, as contemplated by this Agreement, Cubs shall be entitled to a partial abatement and suspension of its payment obligations hereunder, until the City Fields are repaired, restored, replaced or rebuilt, as applicable, and such operational and use rights are fully reinstated, consistent with the standards of this Agreement, and in such event the City shall exercise diligent, good faith efforts to assist Cubs in locating alternate facilities for Cubs use during such period of repair, restoration, replacement or rebuilding.

15.4. Termination. Upon termination of this Agreement pursuant to this Article 15: (i) Cubs' payment obligations under this Agreement shall be prorated to the effective date of termination and the City shall refund to Cubs any such amounts prepaid beyond the effective date of termination; and (ii) the Parties shall have no further rights or obligations hereunder except those which expressly survive termination of this Agreement including, without limitation, the City may elect to refrain from repairing, restoring, replacing or rebuilding the Spring Training Facilities or any portion thereof.

16. **Condemnation.**

16.1. **Entire or Substantial Taking.** If the entire Spring Training Facilities Site is appropriated or taken by any governmental authority with the power of eminent domain (a “**Condemning Authority**”), or sold in lieu of or in anticipation of condemnation by a Condemning Authority, or if part of the Spring Training Facilities Site is so taken or conveyed so, in Cubs' sole discretion, the effective exercise of the operational and use rights of Cubs under this Agreement are materially interfered with or the Spring Training Facilities or applicable portion thereof cannot be timely and reasonably restored or rebuilt, Cubs may provide notice to the City at any time after the occurrence of any of the foregoing of its election to terminate this Agreement whereupon such termination shall be effective as of the date the Condemning Authority takes title or possession, whichever first occurs. If this Agreement is terminated pursuant to this Section 16.1, all amounts payable by Cubs shall be prorated to the effective date of termination and the City shall refund to Cubs any amounts prepaid beyond the effective date of termination.

16.2. **Partial Taking.** If part of the Spring Training Facilities Site are taken or conveyed so, in Cubs' sole discretion, the operational and use rights granted to Cubs under this Agreement are not materially interfered with or the Spring Training Facilities or applicable portion thereof can be timely and reasonably restored or rebuilt so, upon Completion, the operational and use rights granted to Cubs under this Agreement will be reinstated without material interference, this Agreement shall not be terminated and, instead, Cubs shall be entitled to a full or partial abatement and suspension of its payment obligations hereunder, to the extent Cubs are deprived of the effective exercise of the operational and use rights of Cubs under this Agreement, until the restoration or rebuilding of the Spring Training Facilities is Completed and, in such event, the City shall exercise diligent, good faith efforts to assist Cubs in locating alternate facilities for Cubs use during such period of restoration or rebuilding.

16.3. **Awards.** All awards and payments made for any taking or conveyance of all or any part of Cubs' rights in respect of the Spring Training Facilities Site, including but not limited to severance damages, shall be paid to Cubs in addition to any relocation benefits to which Cubs may be entitled under Applicable Laws.

17. **Representations and Warranties.**

17.1. **The City.** The City represents and warrants to Cubs:

(a) The City's execution and approval of this Agreement have been in compliance with the procedural requirements of the City Charter and the City Code.

(b) The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, the City knows of no litigation, proceeding, initiative, referendum or official investigation contesting the powers of the City or its officials with respect to this Agreement including the City's execution, delivery and performance hereof.

(d) The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

(e) The City holds fee simple title to the Spring Training Facilities and the Spring Training Facilities Site free and clear of any liens or encumbrances except the Permitted Exceptions and,

except as expressly contemplated in this Agreement, shall not consent to or grant any lien, encumbrance or other interest in or to the Spring Training Facilities Site or the Spring Training Facilities unless the City has obtained a Non-Disturbance and Recognition Agreement by the grantee, mortgagee or lender in favor of Cubs in substantially the form attached hereto as **Exhibit "J"**, or convey or other dispose of any portion thereof, without the prior consent of Cubs which may be given or withheld in Cubs discretion.

(f) Without limitation of the foregoing, as of the Commencement Date, the City holds fee simple title to the Spring Training Facilities Site and all other real property required for the other Improvements which are the subject of this Agreement, free and clear of any liens or encumbrances, and has all necessary authority and power to grant the operational and use rights to Cubs contemplated under this Agreement.

(g) The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

For the purposes of this Section 17.1, the "knowledge" of the City shall be deemed to refer only to the knowledge (whether actual or constructive, as applicable) of the City Manager as of the Effective Date (as defined in the Development Agreement) and solely in his or her capacity as the City Manager including in no event shall he or she be personally liable for any representation or warranty contained herein.

17.2. **Cubs.** Cubs represents and warrants to the City:

(a) Cubs is the sole owner of the Team and is the sole holder of all operating and franchise rights with respect to the Team which affect the rights and obligations of Cubs under this Agreement.

(b) Cubs' execution and approval of this Agreement are in compliance with the organizational/formation and operating documents of Cubs.

(c) Cubs will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(d) As of the Commencement Date, Cubs knows of no litigation, proceeding or official investigation contesting the powers of Cubs or its officers with respect to this Agreement including Cubs' execution, delivery and performance hereof.

(e) The execution, delivery and performance of this Agreement by Cubs is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Cubs is a party or is otherwise subject.

(f) Cubs has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

(g) Cubs has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

For the purposes of this Section 17.2, the "knowledge" of Cubs shall be deemed to refer only to the knowledge (whether actual or constructive, as applicable) of the General Counsel of Cubs as of the Effective Date (as defined in the Development Agreement) and solely in his or her capacity as such

officer of Cubs including in no event shall he or she be personally liable for any representation or warranty contained herein.

17.3. **Survival of Termination.** The provisions of this Article 17 shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

18. **Notices and Filings.**

18.1. **Manner of Service.** Except as otherwise required by Applicable Laws, all notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national “overnight” courier service (such as UPS or FedEx), or by United States certified mail (return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To the City: City of Mesa
20 East Main Street
Mesa, Arizona 85211
Attention: City Manager

Copy to: City of Mesa
20 East Main Street
Mesa, Arizona 85211
Attention: City Attorney

To Cubs: Chicago Cubs Baseball Club, LLC
1060 West Addison
Chicago, Illinois 60613
Attention: Office of the President

Copy to: Chicago Cubs Baseball Club, LLC
1060 West Addison
Chicago, Illinois 60613
Attention: Office of the General Counsel

18.2. **Effective Date of Notices.** No such notice, demand or other communication will be deemed effective absent documented confirmation in commercially acceptable form and, in such event, such notice, demand or other communication shall be deemed effective: (i) if delivered personally or delivered through a same day delivery/courier service, upon the date of such confirmation of delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above, upon actual receipt, and (iii) if delivered by a recognized national overnight delivery service, the date of such confirmation of delivery; in each case except delivery by U.S. Mail regardless of whether such notice, demand or other communication is actually received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Article 18. Notices delivered electronically (*e.g.*, e-mail) shall not be effective for any purpose. Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided, if such payment is made in any manner described in the preceding sentence, such payment shall be deemed made at the time provided in

this Section 18.2 for notices, demands and other communications to be deemed effective. Any Party may change its address by written notice delivered to the other Party in accordance with this Article 18.

19. General Provisions.

19.1. **Operating Lease.** Without limiting any other term or condition of this Agreement, the Parties acknowledge and agree this Agreement is intended to be an “operating lease” and not a capital lease within the meaning of GAAP.

19.2. **Designated Representatives.** Whenever a term or condition of this Agreement refers to a “designated representative” of a Party, such reference shall be to the representative designated for such purpose in a notice by a Party to the other Party, provided, if no such designation has occurred or if such designated representative is no longer employed by the Party or otherwise available, the “designated representative” for the City shall be deemed to be its City Manager and for the Cubs its General Counsel.

19.3. **Persons Not Liable.** No shareholder, partner, member, director, officer, official, representative, agent, attorney or employee of either Party shall be personally liable to the other Party, or to any successor in interest to the other Party, in the event of any Default by a Party or for any amount which may become due to the other Party or any successor or assign, or with respect to any obligation of the City or Cubs under the terms of this Agreement.

19.4. **Good Faith of Parties.** Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

19.6. **Further Assurances.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

19.7. **Status Statements.** Any Party (the “**Requesting Party**”) may (as may be reasonably required by such Requesting Party) from time to time, deliver written notice to any other Party requesting such other Party (the “**Providing Party**”) provide in writing, to the knowledge of the Providing Party: (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified, and if so amended, identifying the amendments, (c) the Requesting Party is not in Default in the performance of its obligations under this Agreement, or, if in Default, to describe therein the nature and amount of any such Default, and (d) any other matter reasonably requested (a “**Status Statement**”). A Party receiving a request hereunder shall execute and return such Status Statement within thirty (30) days following the receipt thereof. The City Manager (or the City Manager's designee) shall have the right to execute for or on behalf of the City, any Status Statement requested by Cubs hereunder. The City acknowledges a Status Statement hereunder may be relied upon by a Mortgagee, provided however the City shall have no liability for monetary damages suffered by Cubs, or any Mortgagee, or to any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by the City.

19.8. Rights of Lenders. Notwithstanding any other provision hereof:

(a) Cubs may convey, pledge, encumber, grant security interests in, or otherwise transfer, by deed of trust, mortgage, collateral assignment, security agreement, or similar instrument (each a "**Mortgage**"), all or any portion of its interest in and to any of its right, title and interests under this Agreement in favor of a single lender (or group of participating lenders) solely in connection with the encumbering of all or substantially all of the Team's assets in favor of such single lender (or group of participating lenders) (collectively, "**Mortgagee**"). Such Mortgagee shall be subject to all applicable terms and provisions of this Agreement, except as otherwise expressly provided herein.

(b) If the City is given notice of any Mortgage, and the address to which notices to the Mortgagee can be sent, the City will thereafter use commercially reasonable efforts simultaneously to send to such Mortgagee, at the address so given, a copy of any notice given to Cubs alleging Default or other non-performance by Cubs, which could entitle the City to exercise its rights or pursue remedies hereunder. All such notices shall be given pursuant to the provisions of Section 18 of this Agreement and consistent with the Non-Disturbance and Recognition Agreement in the form attached hereto as **Exhibit "J"**. If the City is required to give notice to more than one Mortgagee (or group of lenders), the failure of the City to provide notice to such additional Mortgagee shall not be a breach by the City of this Section 19.8. In the event the City has unintentionally failed to provide notice to such additional Mortgagee or additional Mortgagees (each, an "Omitted Mortgagee"), the sole remedy of such Omitted Mortgagee shall be an extension of any applicable time to cure the Default or other non-performance claimed in the notice (with such extension not to exceed thirty (30) days from the date that such Omitted Mortgagee discovered that it had not received the notice described in this Section 18.8), provided that no more than sixty (60) days have passed since the expiration of the applicable cure date set forth in the notice. If more than sixty (60) days have passed since the expiration of the applicable cure date, then no Omitted Mortgagee shall have any cure (or additional cure) rights pursuant to this Section 19.8.

(c) Any Mortgagee shall be deemed to be a Requesting Party as set forth in Section 19.7 hereof, and the City Manager (or his or her designee) shall have the right to execute any Status Statement reasonably requested by a Mortgagee. Additionally, upon the written request of any Mortgagee, the City shall execute and deliver a Non-Disturbance and Recognition Agreement in the form attached to this Agreement as **Exhibit "J"** (or in such other form substantially similar thereto as may be requested by such Mortgagee). If the City is required to provide a status statement or a Non-Disturbance and Recognition Agreement to more than one Mortgagee (or group of lenders), the failure of the City to provide a separate statement or Non-Disturbance and Recognition Agreement to any such additional Mortgagee shall not be a breach by the City of this Section 19.8, provided such additional Mortgagee may thereafter request in writing the City provide such separate status statement and/or or a Non-Disturbance and Recognition Agreement.

19.9. Recognition and Non-Disturbance. So long as no Default of Cubs has occurred and is continuing, the City covenants and agrees that, from and after the Commencement Date, Cubs may quietly hold, occupy and enjoy exclusive use and possession of the Spring Training Facilities and Public Parking during the Term, subject to the provisions of Article 2. Without limitation of the foregoing, the City represents that the City holds the entire fee interest in and to that portion of the City Site which is (or may be, as applicable) subject to this Agreement and, with respect to any lien or encumbrance which is superior to this Agreement, the City shall have obtained and provided to Cubs prior to the Commencement Date, and, with respect to any future lien or encumbrance to which the City is a party and which is superior to this Agreement, the City shall obtain the agreement of each and every holder of any such lien or encumbrance, in form and substance reasonably satisfactory to Cubs, that, so long as no Default of Cubs has occurred and is continuing, such holder (on its own behalf and on behalf of its

successors and assigns) will recognize and not disturb the tenancy of Cubs nor interfere with or restrict the rights granted to Cubs herein.

19.10. **Successors and Assigns.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D), provided however Cubs' rights and obligations hereunder may be assigned or transferred at any time the assignor is not in Default under this Agreement to a single person or entity which has acquired the entirety of such rights and obligations either (i) as a successor in interest to Cubs or any Mortgagee and has acquired all ownership and operating (franchise) rights and interest in the Team, or (ii) pursuant to foreclosure of any Mortgage on the right, title and interest of Cubs in and under this Agreement and all other ownership and operating (franchise) rights and interest, provided in either case the successor has expressly and in writing for the benefit of the City either (A) assumed all of the obligations of the assignor under this Agreement including but not limited to all obligations of Cubs arising prior to the date of such assignment or transfer, with respect to this Agreement, or (B) assumed all of the obligations of the assignor under this Agreement arising from and after the date of such assignment or transfer, with respect to this Agreement, provided, in the case of an assumption pursuant to this item (B), either (1) Cubs, or (2) a party with financial capabilities substantially equivalent to or better than the assignor on the date of such assignment (or otherwise reasonably acceptable to the City in the case of an assignment by an assignor which is not Cubs or its Affiliate) shall guaranty to the City the obligations of the assignor under this Agreement arising prior to the date of such assignment or transfer.

19.11. **Governing Law; Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement (whether by a Party, or by a permitted successor or assign to all or any interest of a Party) shall be commenced and maintained in the Superior Court for Maricopa County, in Phoenix, Arizona, and the Parties (and their successors and assigns) agree and consent to the exclusive jurisdiction of such Superior Court. Cubs (and their successors and assigns) waive all right to seek removal of any action to any court (federal or state) other than the Superior Court in and for Maricopa County, Arizona.

19.12. **Business Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

19.13. **Time of Essence.** Time is of the essence in implementing the terms of this Agreement.

19.14. **Headings.** The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

19.15. **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement. The Recitals set forth at the beginning of this Agreement and the introductory paragraphs preceding the Recitals are incorporated into this Agreement, and the Parties hereby confirm the accuracy of the Recitals.

19.16. **Construction.** The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal,

economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings; provided, however, in the event of any conflict between a term or condition of the Development Agreement and a term or condition of this Agreement pertaining to any matter which is the subject of this Agreement, the term or condition set forth in this Agreement shall control. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement ambiguous or conflicting terms or provisions contained in this Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

19.17. No Partnership; Third Parties. Nothing contained in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between the City and Cubs. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except each Mortgagee shall be a third party beneficiary of the provisions of this Section 19.17, and except the protection of the indemnification provisions of this Agreement shall extend to all Indemnified City Parties and Indemnified Cubs Parties acting in the course and scope of their office, employment or engagement and all such persons shall be, and are intended to be, third party beneficiaries of such indemnification provisions.

19.18. Amendment.

(a) No change, addition or deletion is to be made to this Agreement except by a written amendment approved by the City Council and executed by the Parties and for which all necessary MLB Approvals have been obtained in advance.

(b) Notwithstanding the foregoing, the City Manager shall have the authority, without further action of the City Council, to amend this Agreement for purposes of substituting revised exhibits delineating changes in the location and boundaries of the Spring Training Facilities Site and/or to record an affidavit of correction modifying the boundary of the Spring Training Facilities Site.

(c) Within ten (10) days after any approved amendment to this Agreement, pursuant to this Section 19.18, such approved amendment shall be recorded in the office of the Maricopa County, Arizona Recorder.

19.19. Limited Severability. The Parties agree in the event any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Law) such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as and if reformed in accordance with this Section 19.19.

19.20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so the signatures of all Parties may be physically attached to a single document.

19.21. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter. With the exception of the Lease Agreement (as applicable), all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), are hereby superseded and merged into this Agreement.

19.22. **Survival.** All representations, warranties and indemnities in this Agreement shall survive the execution and delivery of this Agreement, the consummation of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

19.23. **Covenants Running With Land; Inurement.** The covenants, conditions, terms and provisions of this Agreement relating to use of the Option Property shall run with the Option Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Option Property. Wherever the term “Party” or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

19.24. **Conflict of Interest Statute; Compliance with Financing Requirements.** This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

19.25. **Requirements Applicable to Government Property Improvements.** The Parties acknowledge and agree: (i) the City is a “government lessor,” (ii) Cubs are a “prime lessee” and (iii) the Spring Training Facilities and other Improvements which are the subject of this Agreement and the grant of operational and use rights to Cubs are “government property improvements,” as such terms are defined in A.R.S. §§ 42-6201(1), (2) and (4). The Parties further acknowledge and agree the Spring Training Facilities, Public Parking, the Improvements and the Facilities Equipment which are the subject of this Agreement are owned (and title held) solely by the City as a government lessor and are being leased to Cubs pursuant to this Agreement primarily for athletic, recreational, entertainment, artistic, cultural or convention activities as described in A.R.S. §42-6208(4). Within thirty (30) days after this Agreement is approved by the City Council of the City and executed by the Parties, the Parties shall cause this Agreement to be recorded.

19.27. **Prohibition of Doing Business with Sudan and Iran.** Pursuant to A.R.S. §§35-391.06 and 35-393.06, Cubs hereby certifies to the City Cubs does not have “scrutinized” business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. Cubs acknowledges, in the event either of the certifications to the City by Cubs contained in this paragraph is determined by the City to be false, the City may terminate this Agreement and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393.06.

20. **MLB Provisions.** Notwithstanding any other provision of this Agreement, this Agreement and any rights or exclusivities granted by Cubs hereunder shall in all respects be subordinate to the MLB Rules and Regulations. The issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations shall be at no cost or liability to any MLB Entity or to any individual or entity related thereto. The territory within which the City is granted rights is limited to, and nothing herein shall be construed as conferring on the City rights in areas outside of, the Spring Training territory of the Team as established and amended from time to time. No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined by the applicable MLB Entities) are conferred by this Agreement, except as are specifically approved in writing by the applicable MLB Entities. Nothing in this Section 20 shall in any way limit or impair the rights of the City to exercise any remedy for

damages (but not for injunctive relief, specific performance or other remedy which would prevent Cubs' compliance with the MLB Rules and Regulations) provided by law or under this Agreement in the event Cubs' compliance with the MLB Rules and Regulations causes Cubs' inability to comply with any provision of this Agreement regarding (i) Cubs' obligations of Repair and Maintenance of the Spring Training Facilities, (ii) Cubs' obligations to pay Rent or any other amount required to be paid under this Agreement (including but not limited to Cubs' funding obligations for Interim Capital Improvements), (iii) compliance with Applicable Laws or any requirement relating to public health or safety, (iv) Cubs' obligations to maintain insurance and to indemnify the City, (v) rights or limitations arising under Section 2.4 with respect to naming or sponsorship rights, (vi) zoning or permitted uses of the Spring Training Facilities Site, (vii) benefits granted to the City pursuant to Article 4, (viii) any obligations of Cubs arising under Article 12, (ix) restrictions on assignment as set forth in Section 19.10 or rights granted to Mortgagees pursuant to Section 19.8, and (x) the provisions of Sections 19.11, 19.24, 19.25 and 19.26; and nothing in this Section 20 shall be deemed to authorize or permit any activity, or grant any right, inconsistent with the foregoing.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its City Manager, and Cubs have signed the same, on or as of the day and year first written above.

[Signature Pages Follow]

CITY:

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____
Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Mesa City Attorney

STATE OF ARIZONA)

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged he signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

Cubs:

CHICAGO CUBS BASEBALL CLUB, LLC,
a Delaware limited liability company

By: _____

Its: _____

STATE OF ARIZONA)

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of Chicago Cubs Baseball Club, LLC, a Delaware limited liability company.

Notary Public

My commission expires:

LIST OF EXHIBITS

- A Site Depiction
- B Legal Description: City Site
- C Legal Description: Spring Training Facilities Site
- C-1 Depiction: Spring Training Facilities Site
- D Legal Description: Stadium Site
- D-1 Depiction: Stadium Site
- E Permitted Exceptions
- F Rent Schedule
- G Issue Resolution Ladder
- H Alternative Dispute Resolution
- I-1 Insurance Requirements -- Cubs
- I-2 Insurance Requirements -- City
- J Non-Disturbance and Recognition Agreement

EXHIBIT A

Site Depiction

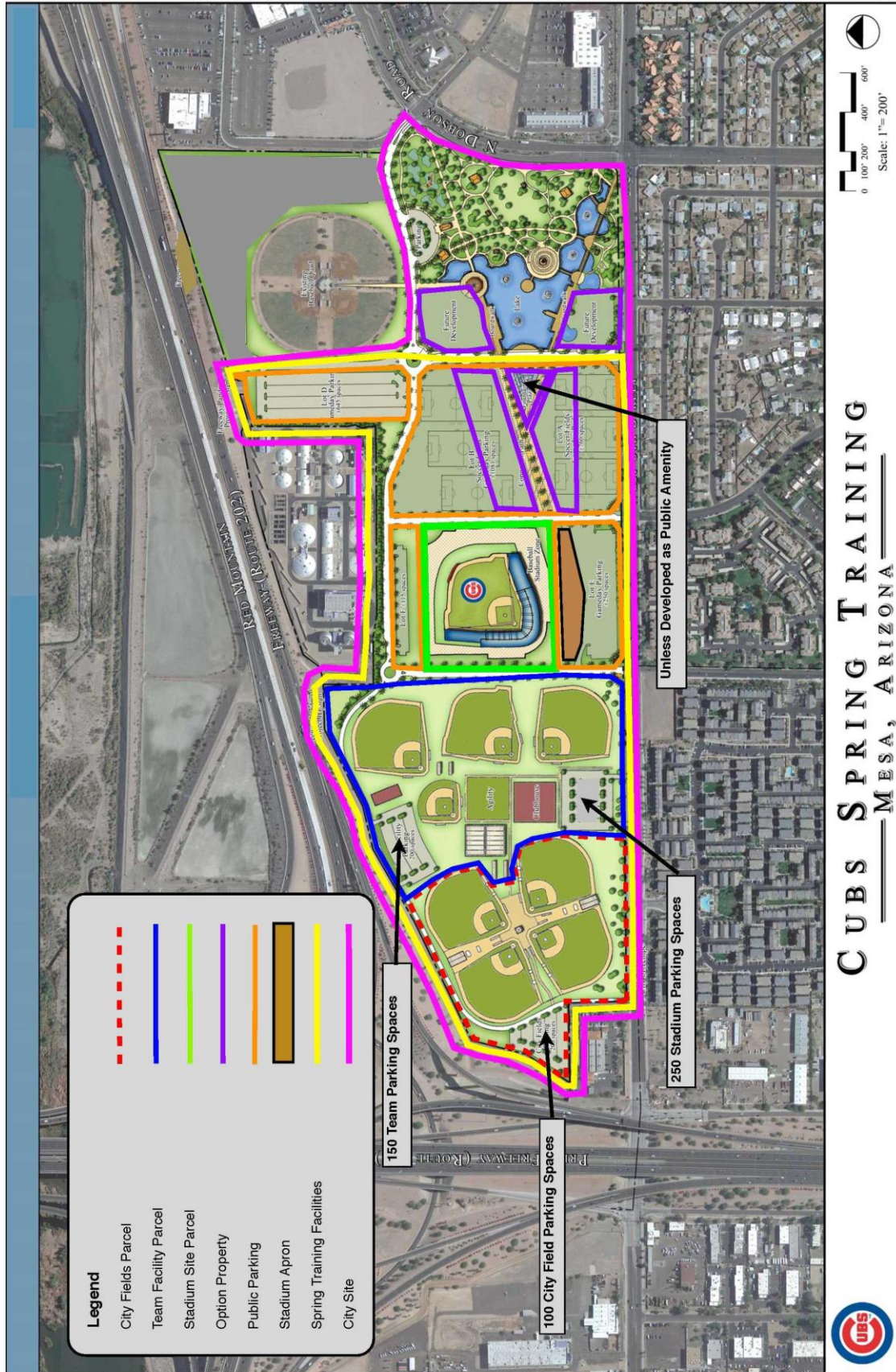


EXHIBIT B

Legal Description: City Site

A Parcel of Real Property Located in the North Half of Section 18, Township One North, Range Five East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Said Parcel described as follows:

Commencing West Corner of said Section 18, thence North 89 degrees 25 minutes 44 seconds East along the Mid Section line of said Section 18 a distance of 1,044.57 feet;

thence North 01 degrees 21 minutes 36 seconds West a distance of 44.91 feet; to the POINT OF BEGINNING, said point being on the North Right-of-Way line of West 8th Street;

thence North 01 degrees 21 minutes 36 seconds West a distance of 291.50 feet;

thence South 89 degrees 44 minutes 22 seconds West a distance of 406.01 feet;

thence North 33 degrees 09 minutes 44 seconds East a distance of 261.23 feet;

thence North 13 degrees 48 minutes 55 seconds East a distance of 286.14 feet;

thence North 64 degrees 24 minutes 13 seconds East a distance of 665.81 feet;

thence North 60 degrees 20 minutes 42 seconds East a distance of 428.26 feet;

thence North 76 degrees 36 minutes 26 seconds East a distance of 220.73 feet;

thence North 63 degrees 26 minutes 05 seconds East a distance of 435.13 feet;

thence North 87 degrees 52 minutes 34 seconds East a distance of 231.33 feet;

thence South 00 degrees 16 minutes 13 seconds East a distance of 266.65 feet;

thence South 89 degrees 44 minutes 03 seconds East a distance of 1,372.64 feet;

thence North 00 degrees 19 minutes 56 seconds East a distance of 666.54 feet;

thence North 74 degrees 25 minutes 30 seconds East a distance of 101.70 feet;

thence South 02 degrees 12 minutes 17 seconds East a distance of 26.36 feet;

thence North 89 degrees 49 minutes 36 seconds East a distance of 71.46 feet;

thence North 01 degrees 25 minutes 15 seconds West a distance of 65.74 feet;

thence North 72 degrees 12 minutes 48 seconds East a distance of 117.11 feet;

thence South 00 degrees 18 minutes 29 seconds West a distance of 929.21 feet;

thence North 60 degrees 18 minutes 22 seconds West a distance of 11.48 feet;

thence South 00 degrees 18 minutes 29 seconds West a distance of 102.37 feet;

thence South 90 degrees 00 minutes 00 seconds East a distance of 128.35 feet to a tangent curve concave to the northwest having a radius of 1,163.76 feet and a central angle of 22 degrees 28 minutes 13 seconds;

thence Northeasterly along said curve to the left a distance of 456.41 feet;

thence North 67 degrees 31 minutes 47 seconds East a distance of 121.78 feet to a tangent curve concave to the southeast having a radius of 710.21 feet and a central angle of 22 degrees 28 minutes 13 seconds;

thence Northeasterly along said curve to the right a distance of 278.53 feet;

thence South 90 degrees 00 minutes 00 seconds East a distance of 105.32 feet to a point on the East Section line of said Section 18;

thence South 89 degrees 05 minutes 04 seconds East a distance of 32.29 feet; to a non-tangent curve, concave to the northeast, having a radial bearing of South 58 degrees 42 minutes 53 seconds West and a radius of 243.45 feet;

thence Southeasterly along said non-tangent curve to the left through a central angle of 14 degrees 38 minutes 40 seconds a distance of 62.22 feet;

thence South 45 degrees 56 minutes 30 seconds East a distance of 79.00 feet to a tangent curve concave to the southwest having a radius of 22.50 feet and a central angle of 86 degrees 37 minutes 48 seconds;

thence Southwesterly along said curve to the right a distance of 34.02 feet to a reverse curve concave to the southeast having a radius of 896.80 feet and a central angle of 39 degrees 45 minutes 05 seconds, said curve being on the west Right-of-Way line of North Dobson Road;

thence Southwesterly along said curve to the left a distance of 622.20 feet;

thence South 00 degrees 56 minutes 23 seconds West along the west Right-of-Way line of North Dobson Road, a distance of 434.06 feet;

thence South 45 degrees 11 minutes 46 seconds West a distance of 27.69 feet to a point 45.00 feet north of the Mid Section line of said Section 18, said point being on the north Right-of-Way line of West 8th Street;

thence South 89 degrees 27 minutes 07 seconds West along the north Right-of-Way line of West 8th Street, a distance of 2,583.62 feet;

thence South 89 degrees 25 minutes 34 seconds West along the north Right-of-Way line of West 8th Street, a distance of 1,613.32 feet to the POINT OF BEGINNING.

The area containing 5,493,668.71 square feet, or 126.11 acres more or less.



October 5, 2011

EXHIBIT C

Legal Description: Spring Training Facilities Site

[To be supplied in accordance with Section 1.83.]

EXHIBIT C-1

Depiction: Spring Training Facilities Site

[To be supplied in accordance with Section 1.83.]

EXHIBIT D

Legal Description: Stadium Site

[To be supplied in accordance with Section 1.89.]

EXHIBIT D-1

Depiction: Stadium Site

[To be supplied in accordance with Section 1.89.]

EXHIBIT E

Permitted Exceptions

The following are "Permitted Exceptions" except and to the extent any such matter is an "Excluded Exception" as defined in the Development Agreement and thereby subject to the City's obligation to effectuate its resolution or removal.

1. The Liabilities, Obligations, and Burdens imposed upon said land by reason of inclusion within the Salt River Project Agricultural Improvement and Power District and Agricultural Improvement Districts.
2. Water Rights, claims or title to water, whether or not shown by the public records.
3. Any adverse claim based upon the assertion that said land or any part thereof is now or at any time has been included within a navigable river, slough or other navigable body of water.
4. Reservations contained in the Patents to said land recorded in Book 5 of Deeds, page 295, Book 53 of Deeds, page 597 and Docket 1237, page 373, reading as follows

"Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts", and also, "Subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law".
5. Reservations contained in the Patents to said land recorded in Book 281 of Deeds, page 492 and Book 120 of Deeds, page 221, reading as follows

"Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed under the authority of the United States of America."
6. Easement for electric lines, and rights incident thereto as set forth in Docket 1382 page 312.
7. Easement for line of poles with wires, and rights Incident thereto as set forth in Docket 3250 page 287.
8. Terms, conditions and easements contained in Agreement for Sale of Real Property under threat of condemnation recorded in Docket 10987 page 705.
9. Easement for underground power, and rights incident thereto as set forth In Docket 12000 page 1444.
10. A Resolution by the Board of Supervisors of Maricopa County, Arizona, recorded in Docket 13600 page 159, purporting to establish a roadway over the South 45 feet.
11. Easement for overhead and underground power, and rights incident thereto as set forth in Docket

15481 page 764.

12. Roadway over the South 45 feet, as disclosed by 83-246144.
13. All matters set forth in instrument recorded in Intergovernmental Agreement recorded in Document No. 90-436689.
14. Terms and Conditions, Liabilities and Obligations contained in that certain Agreement, recorded in Document No. 87-004192.
15. Easement for line of poles with wires, and rights incident thereto as set forth in Document No. 90-268324.
16. Easement for underground power, and rights incident thereto as set forth in Document No. 90-494473.
17. Easement for underground power, and rights incident thereto as set forth in Document No. 91-327407.
18. Easement for underground power, and rights incident thereto as set forth in Document No. 91-327401.
19. Easement for underground power, and rights incident thereto as set forth in Document No. 96-0552108.
20. Easement for drainage, and rights incident thereto as set forth in Document No. 99-0295016.
21. Easement for underground power, and rights incident thereto as set forth in Document No. 2001-0533343.
22. All matters set forth in instrument recorded in that certain Resolution of the City Council of the City of Mesa, Maricopa County, Arizona, Extinguishing a portion of an Easement for Outfall Sewer Line and Dedicating an Easement for Sewer Line purposes recorded in Document No. 2002-0900698.

EXHIBIT F

Rent Schedule

ASSUMPTIONS:

Cubs Stadium Site (Acres):	10
Land Value per Acre:	\$392,040
Land Value per Square Foot:	\$9.00
Total Value of Land:	\$3,920,400
Lease Term (Years):	30
Annual Adjustment (CPI-U)	3.00%
Discount Rate	5.00%

Payment #	Amount	PV
1	\$170,339	\$170,339
2	\$175,449	\$167,094
3	\$180,713	\$163,912
4	\$186,134	\$160,790
5	\$191,718	\$157,727
6	\$197,470	\$154,723
7	\$203,394	\$151,776
8	\$209,496	\$148,885
9	\$215,780	\$146,049
10	\$222,254	\$143,267
11	\$228,921	\$140,538
12	\$235,789	\$137,861
13	\$242,863	\$135,235
14	\$250,149	\$132,659
15	\$257,653	\$130,132
16	\$265,383	\$127,654
17	\$273,344	\$125,222
18	\$281,544	\$122,837
19	\$289,991	\$120,497
20	\$298,691	\$118,202
21	\$307,651	\$115,951
22	\$316,881	\$113,742
23	\$326,387	\$111,575
24	\$336,179	\$109,450
25	\$346,264	\$107,365
26	\$356,652	\$105,320
27	\$367,352	\$103,314
28	\$378,372	\$101,346
29	\$389,723	\$99,416
30	\$401,415	\$97,522
TOTALS	\$8,103,951	\$3,920,400

This Exhibit is an example based on a 10-acre Stadium Site. The actual Stadium Site may be more or less than ten (10) acres. When the actual area of the Stadium Site has been determined, this Exhibit F will be replaced with an Exhibit F utilizing the same land value per square foot, lease term, annual CPI-U adjustment and discount rate.

EXHIBIT G

Issue Resolution Ladder

Level	COM Members	Cubs Members	Timeline for Action
Level One Project Managers	City's designee	Cubs' designee	2 business days
Level Two Senior Management	City's designee	Cubs' designee	2 business days
Level Three Agency Leadership	City's designee	Cubs' designee	2 business days

EXHIBIT H

Dispute Resolution Process

1. **Arbitration and Mediation of Disputes.** Generally, because time is of the essence with regard to the performance of the Agreement, the Parties acknowledge and agree that the time for exercising the Dispute Resolution procedure is compressed.
 - 1.1 **Defined Terms.** Defined terms appear in this Exhibit with the first letter of each word in the term capitalized. Unless otherwise expressly provided herein, all defined terms appearing herein shall have the same meanings as are attributed to such terms in the Agreement of which this Exhibit is a part.
 - 1.2 **Election to Arbitrate.** Either Party may elect to resolve by arbitration, after mediation as described below, any dispute between Cubs and the City arising from or pertaining to this Agreement, including without limitation a Party's failure to pay or perform its obligations relating to the Spring Training Facilities, Public Parking and other Improvements contemplated by and otherwise relating to the Agreement ("**Dispute**").
 - 1.3 **Governing Rules.** The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association ("**AAA**") then in effect except to the extent modified herein.
 - 1.4 **Qualification of Mediators and Arbitrators.** Each proposed mediator and arbitrator shall have at least ten years experience in commercial and/or real estate matters in Arizona and shall be an attorney licensed to practice law in Arizona. Any Arbitrator or Mediator shall be selected, subject to the foregoing qualifications, pursuant to the practice then employed by the AAA for the selection of arbitrators and/or mediators.
 - 1.5 **Initiation of Proceeding.** The existence of any Dispute arising from or pertaining to the Agreement shall not delay or excuse any performance of a Party's monetary or other obligations under the Agreement except as expressly provided in the Agreement. If any Dispute shall arise between the Parties, then, subject to applicable statutes of limitation, either Party may initiate arbitration by serving notice to the other Party of its intention to arbitrate the Dispute (the "**Arbitration Demand**"), provided either Party (the "**Initiating Party**") shall, as a precursor to arbitration, within five business days of receipt of such Arbitration Demand, notify the other Party (the "**Responding Party**") of such Party's election to submit any Dispute, first, to non-binding mediation (the "**Mediation Notice**"). The Initiating Party shall include with such Mediation Notice a notice to the AAA of the Dispute and a request for appointment of a mediator in accordance with the Agreement and the procedures then employed by the AAA. Either party may reject the mediator selected up to two times but then must accept the choice of mediator. Prior to the mediation, the Parties shall each provide the mediator with a confidential (to be exchanged by the Parties) statement setting forth such Party's description of the nature of the Dispute and, if applicable, the relief sought. The mediation conference shall be conducted and concluded within 60 days of the Mediation Notice and within 30 days of the appointment of a Mediator.
 - 1.6 **Arbitration.** If the mediation is not successful, then, if the design professional and/or general contractor in respect of the Project are parties to the Dispute, the Dispute shall be resolved as provided in the applicable contract documents or, if the Dispute is solely

between the Parties, the Parties shall proceed to binding arbitration. A copy of the Arbitration Demand shall be filed at the local office of the AAA together with a copy of the Agreement and this arbitration provision and the appropriate filing fee as required by the AAA, which shall be delivered to the AAA on or before ten business days after the later of (i) the receipt of the Arbitration Demand, or (ii) the conclusion of the unsuccessful mediation. The Parties shall request an arbitrator be appointed as soon as possible in accordance with the selection procedures then employed by the AAA. The Dispute shall be heard by a single arbitrator with the qualifications specified in Section 1.4 of this Exhibit.

- 1.7 **Hearing.** The arbitration hearing must be held as soon as possible and, in all events, must commence within 30 days following the date on which the arbitrator is appointed, unless the arbitrator for good cause shown delays the hearing to permit discovery or otherwise. At least five days prior to the commencement of the arbitration hearing, each Party shall provide the other Party and the arbitrator with a statement of its position respecting the Dispute in question and a list of any witnesses whom such Party expects to testify at such hearing on its behalf. The arbitration proceeding shall take place in Mesa, Arizona.
- 1.8 **Scope of Award.** With the exception of monetary damages other than actual damages (e.g., punitive, consequential, or other special damages, which are expressly precluded), the arbitrator shall have the authority to award any remedy or relief a federal district court in Arizona could order or grant and which is permitted under the Agreement. The Arbitrator shall have the discretion to award attorneys' fees to the prevailing party in an amount which the Arbitrator deems reasonable in the circumstances.
- 1.9 **Fees and Costs.** Each party shall pay its own costs in arbitration and the Administrative Fees imposed by the AAA and the Parties shall share equally the costs of the arbitrator; provided, however, all such charges/fees may be awarded by the Arbitrator, in his/her discretion, to the prevailing party with arbitration as determined by the Arbitrator.
- 1.10 **Appointment of Successor.** If any arbitrator appointed pursuant to this Exhibit shall thereafter die or become unable or unwilling to act, a successor shall be appointed in accordance with the procedures continuously employed by the AAA in such circumstances.
- 1.11 **Decision Binding.** The decision or award by the arbitrator when made shall be final and non-appealable and the Parties shall be bound by such arbitration decision or award for all purposes and judgment may be entered upon it in accordance with applicable law in the Superior Court of the State of Arizona in and for the County of Maricopa.
- 1.12 **Notices.** All notices and other communications required or permitted hereunder shall be in writing and delivered in accordance with the notice provision of the Agreement. Such notices and communications shall be deemed to be given and received pursuant to such provision of the Agreement.

EXHIBIT I-1

INSURANCE REQUIREMENTS -- Cubs

Cubs shall procure and maintain (at no cost to the City) insurance during the applicable "**Coverage Period**," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Spring Training Facilities Site.

The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in the Facilities Use Agreement to which this Exhibit is attached ("**Agreement**"). Neither the City nor Cubs agrees or warrants the minimum limits contained herein are sufficient to protect the other from liabilities which might arise from or in connection with the Spring Training Facilities Site, and the Parties are free to purchase additional insurance as they may determine. Terms not otherwise defined in this Exhibit, shall have the meanings accorded to them in the Agreement.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Cubs shall provide (or cause to be provided) coverage during the Coverage Period and with limits of liability not less than those stated below:

Type	Amount	Coverage Period
Property	80% of the replacement value of the Improvements and related facilities located on the Stadium Site and the Team Facilities Site; and the full replacement value of the Facilities Equipment.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
Workers' Compensation ("WC") and Employers' Liability ("EL")	WC: Statutory EL: \$1,000,000 each accident/each employee.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
General Liability (which shall include operations, products, completed operations, and contractual indemnity coverage)	With limits not less than \$10,000,000 each occurrence, Combined Single Limit for bodily injury and property damage and \$20,000,000 general aggregate, and with coverage at least as broad as on ISO Form CG 00 01.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
Commercial Automobile Liability	With limits not less than \$5,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable, and with coverage at least as broad as on ISO Form CA 00 01.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, provisions with the following effect:
1. The following shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies as required herein:

The City of Mesa, Arizona, the present and former members of its City Council, and representatives, agents, employees, predecessors, successors, assigns and attorneys.
 2. Cubs' insurance coverage shall be primary and non-contributory with respect to all other City insurance sources, whether collectible or not.
 3. All policies shall contain cross-liability endorsements, or their equivalents (i.e., that adds or provides, and does not delete, such coverage), and all policies shall include a waiver of subrogation rights against City, its agents, employees and representatives.
 4. All general liability policies shall include contractual liability coverage covering, among other things, Cubs' indemnification obligations (if any) under the Agreement.
- C. **EXCESS OR UMBRELLA POLICY:** In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements provided Cubs obtains excess or umbrella coverage written on a "following form" basis.
- D. **NOTICE OF CANCELLATION:** Cubs shall obtain, with all policies required herein, an Accord 25 form or an equivalent form which states the insurer shall endeavor to provide the City thirty (30) days' prior written notice (except when cancellation is for non-payment of premium, then ten days prior notice) before suspending, voiding, or canceling the policy. Such notice shall be sent directly to City of Mesa, 20 East Main Street, Mesa, Arizona 85211, Attention: City Manager.
- E. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A-VII, unless otherwise approved in writing by the City or otherwise provided in the Agreement. Cubs in no way agrees or warrants the above-required minimum insurer rating is sufficient to protect the City from potential insurer insolvency.
- F. **VERIFICATION OF COVERAGE:** Cubs shall furnish the City with original Certificates of Insurance and amendatory endorsements for all policies as required herein. The certificates are to be signed by a person duly authorized by the insurer. All Certificates of Insurance and any required endorsements are to be received and approved by the City before the applicable Coverage Period. Each applicable insurance policy must be in effect at or prior to and remain in effect for the Coverage Period. All certificates required by the Agreement shall be sent directly to City of Mesa, 20 East Main Street, Mesa, Arizona 85211, Attention: City Manager. The City reserves the right to require complete copies of all insurance policies at any time, but not more than once each twelve consecutive months during the Term of the Agreement.
- G. **WAIVER OF SUBROGATION:** In addition to the waiver of subrogation requirements as provided in the Agreement and in this Exhibit (Section B), Cubs agrees to obtain any endorsement necessary to comply with the waiver of subrogation contained in the Agreement.

Cubs shall obtain a worker's compensation policy endorsed with a waiver of subrogation in favor of the City for all work performed by Cubs, its employees, agents, contractors and subcontractors.

- H. **DEDUCTIBLES AND SELF-INSURED RETENTIONS:** Any deductibles or self-insured retention in excess of \$250,000 shall be declared to and be subject to approval by the City. The City hereby acknowledges and approves any self-insured retention in excess of \$250,000.00 solely as part of the MLB Captive Insurance Program. Cubs shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from the City and its agents, employees and representatives.

EXHIBIT I-2

INSURANCE REQUIREMENTS -- City

The City shall procure and maintain (at no cost to Cubs) insurance during the applicable "**Coverage Period**," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Spring Training Facilities Site.

The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in the Facilities Use Agreement to which this Exhibit is attached ("**Agreement**"). Neither the City nor Cubs agrees or warrants the minimum limits contained herein are sufficient to protect the other from liabilities which might arise from or in connection with the Spring Training Facilities Site, and the Parties are free to purchase additional insurance as they may determine. Terms not otherwise defined in this Exhibit, shall have the meanings accorded to them in the Agreement.

- A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** The City shall provide (or cause to be provided) coverage during the Coverage Period and with limits of liability not less than those stated below:

Type	Amount	Coverage Period
Property	Not less than the replacement value of the Improvements and related facilities located on the City Fields Site	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
Workers' Compensation ("WC") and Employers' Liability ("EL")	WC: Statutory EL: \$1,000,000 each accident/each employee.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
General Liability (which shall include operations, products, completed operations, and contractual indemnity coverage)	With limits not less than \$10,000,000 each occurrence, Combined Single Limit for bodily injury and property damage and \$20,000,000 general aggregate, and with coverage at least as broad as on ISO Form CG 00 01.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
Commercial Automobile Liability	With limits not less than \$5,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable, and with coverage at least as broad as on ISO Form CA 00 01.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.

- B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, provisions with the following effect:

1. The following shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies as required herein:

(a) Chicago Cubs Baseball Club, LLC; (b) Chicago Baseball Holdings, LLC; and for each of (a) and (b), its officers, directors, members, representatives, agents, employees, contractors, guests, predecessors, successors, assigns and attorneys.

2. The City's insurance coverage shall be primary and non-contributory with respect to all other Cubs insurance sources, whether collectible or not.
3. All policies shall contain cross-liability endorsements, or their equivalents (i.e., that adds or provides, and does not delete, such coverage), and all policies shall include a waiver of subrogation rights against Cubs, its agents, employees and representatives.
4. All general liability policies shall include contractual liability coverage covering, among other things, the City's indemnification obligations (if any) under the Agreement.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements provided the City obtains excess or umbrella coverage written on a "following form" basis.

D. NOTICE OF CANCELLATION: With respect to insurance other than self-insurance, the City shall cause its insurers to provide Cubs thirty (30) days' prior written notice (except when cancellation is for non-payment of premium, then ten days prior notice) before suspending, voiding, or canceling the policy. Such notice shall be sent directly to Cubs, 1060 W. Addison, Chicago, Illinois 60613, Attention: Michael Lufrano, Esq.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A-VII, unless otherwise approved in writing by Cubs or otherwise provided in the Agreement. The City in no way agrees or warrants the above-required minimum insurer rating is sufficient to protect Cubs from potential insurer insolvency.

F. VERIFICATION OF COVERAGE: The City shall furnish Cubs with original Certificates of Insurance and amendatory endorsements for all policies as required herein. The certificates are to be signed by a person duly authorized by the insurer. All Certificates of Insurance and any required endorsements are to be received and approved by Cubs before the applicable Coverage Period. Each applicable insurance policy must be in effect at or prior to and remain in effect for the Coverage Period. All certificates required by the Agreement shall be sent directly to Cubs, 1060 W. Addison, Chicago, Illinois 60613, Attention: Michael Lufrano, Esq. Cubs reserves the right to require complete copies of all insurance policies at any time, but not more than once each twelve consecutive months during the Term of the Agreement.

G. WAIVER OF SUBROGATION: The City shall obtain, with all policies required herein, an Accord 25 form or an equivalent form which states the insurer shall endeavor to provide City and Cubs 30 days' prior written notice (except when cancellation is for non-payment of premium, then ten days prior notice) before suspending, voiding, or canceling the policy. Such notice shall be sent directly to Cubs, 1060 W. Addison, Chicago, Illinois 60613, Attention: Michael Lufrano, Esq., and to City of Mesa, 20 East Main Street, Mesa, Arizona 85211, Attention: City Manager.

H. DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retentions shall be in amounts as established by the City Council from time-to-time. The City shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Cubs and its agents, employees and

representatives.

EXHIBIT J

When recorded, return to:

NON DISTURBANCE AND RECOGNITION AGREEMENT (Spring Training Facilities)

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ____ day of _____, 201__, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) CHICAGO CUBS BASEBALL CLUB, LLC, a Delaware limited liability company ("**Cubs**"); (b) _____ ("**Lender**"); and (c) CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**City**").

1. Recitals.

- 1.1 Cubs is a Party to a Development Agreement (Spring Training Facilities) entered into with the City, dated _____, 201__, and recorded in the Official Records of Maricopa County, Arizona, at _____ ("**Agreement**"), which sets forth certain rights and responsibilities of the City and Cubs with respect to certain real property owned by the City and legally described on **Exhibit A-1** and depicted on **Exhibit A-2** attached hereto (the "**Spring Training Facilities Site**") and a Facilities Use Agreement entered into with the City, dated _____, 201__, a Memorandum of which is recorded in the Official Records of Maricopa County, Arizona, at _____ ("**FUA**").
- 1.2 Cubs' rights under the Agreement and FUA are sometimes referred to herein as "**Cubs' Position**." Cubs' obligations under the Agreement and FUA are sometimes referred to herein as the "**Obligations**."
- 1.3 Lender has agreed to lend money or otherwise make credit available to Cubs, and Cubs will execute (or has executed) certain loan documents (the "**Loan Documents**") relating thereto, which may include, but are not limited to, an [*Assignment of Interest and Security Agreement*] and/or [*Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement*] for the use and benefit of Lender (the "**Security Instruments**") to secure the financing provided by Lender to Cubs (the "**Loan**"). The Security Instruments will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the interest of Cubs under the Agreement and the FUA.
- 1.4 Lender has certain rights and remedies under the Loan Documents, including but not limited to the right to foreclose the Security Instruments and effectuate a transfer of the Cubs Position.
- 1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. Subordination. Subject to the provisions of this NDRA, the rights of Lender pursuant to the Security Instruments are and shall continue to be junior, inferior, subject and subordinate to the Agreement and the FUA, as the same may hereafter be modified, amended, restated or replaced.

3. Notice of Non-Performance.

- 3.1 Lender is a "Mortgagee" under the Agreement and the FUA. The City shall give Lender (a) all written notices as required under the Agreement and the FUA (the "**Notice**"), and (b) 60 days notice following the expiration of Cubs' cure period to cure any alleged non-performance under the Agreement and the FUA including but not limited to any alleged Event of Default, as defined in the Agreement and the FUA (each, an "**Event of Non-Performance**") prior to terminating the Agreement and the FUA or invoking such other remedies as may be available to City under the Agreement and the FUA.
- 3.2 If the City is required to give notice to more than one Mortgagee (or group of lenders) under the Agreement or FUA, the unintentional failure of the City to provide notice to any such additional Mortgagee shall not be a breach by the City of the Agreement or FUA, as applicable. In the event the City has unintentionally failed to provide notice to such additional Mortgagee or additional Mortgagees (each, an "**Omitted Mortgagee**"), the sole remedy of such Omitted Mortgagee shall be an extension of any applicable cure period in respect of the Default or other non-performance claimed in the notice to Cubs for a period of thirty (30) days from the date such Omitted Mortgagee discovers and provides notice to the City it has not received the notice described in this Section 3.2; provided, however, if such Omitted Mortgagee fails to discover and provide notice to the City it has not received the notice described in this Section 3.2 within sixty (60) days following expiration of the applicable Cure Period, such Omitted Mortgagee shall have no cure (or additional cure) rights pursuant to this Section 3.2. Notwithstanding anything in this NDRA to the contrary, in the event of a discrepancy or ambiguity in or between the terms of this NDRA and the Agreement or FUA (as applicable), the Agreement or FUA (as applicable) shall prevail in each instance.
- 3.3 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth above for curing an Event of Non-Performance (subject to extension as set forth hereinafter), in its sole discretion to: (a) to cure the Event of Non-Performance, in which event Cubs shall retain the Cubs Position and the Agreement and FUA will continue in full force and effect; (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Security Instruments) to assume the Cubs Position (to "**Assume**" or an "**Assumption**"); and/or (c) to exercise its rights and remedies under the Loan Documents including its right to foreclose the Security Instruments. Lender shall give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender. In the event Lender elects to exercise its rights under subclause (c) above, the City shall defer exercising any of its remedies under the Agreement or the FUA, including any right to terminate same, for such period as is reasonably necessary to enable Lender to exercise its rights under the Loan Documents, not to exceed 180 days, provided Lender promptly commences and diligently pursues such exercise.
- 3.4 If Lender agrees to Assume the Cubs Position, Lender and the City shall execute an amendment to the Agreement and the FUA, respectively (each an "**Amendment**") to memorialize such Assumption and shall cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment shall state Lender has fully assumed the Cubs Position and Lender is thereafter substituted for Cubs with respect to all Cubs Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement and the FUA following the date of the

Assumption. The execution or approval by Cubs of the Amendment shall not be necessary or required, and upon execution and recordation of the Amendment, the City shall (i) look to Lender and/or Cubs for performance of the Cubs Obligations from and after the date of the Assumption and (ii) make to Lender all payments, and render in favor of Lender all performance, required to be made by the City to Cubs under the Agreement and the FUA.

- 3.5 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Security Instruments, or any other acquisition by Lender of the Cubs Position in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Cubs Position to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. § 33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), then, at Purchaser's election, the Purchaser shall be deemed to have assumed the Cubs Position following the date of such Assumption. Upon the acquisition of the Cubs Position by a Purchaser and the Purchaser's election to assume the Cubs Obligations, the City shall (i) look to Purchaser and/or Cubs for performance of the Cubs Obligations and (ii) make to Purchaser all payments, and render in favor of Purchaser all performance, required to be made by the City to Cubs under the Agreement and the FUA.
- 3.6 Unless and until an Assumption occurs, as defined herein, nothing in this NDRA shall constitute an assumption by Lender of any Cubs Obligation and the City shall look solely to Cubs for the performance of the Cubs Obligations. Cubs shall continue to be liable for all of the Cubs Obligations and shall perform all such Cubs Obligations, shall comply with all terms and conditions of the Agreement and the FUA applicable to Cubs, and shall take such steps as may be necessary or appropriate to secure performance by the City under the Agreement and the FUA.
- 3.7 Whether before or after an Assumption as defined herein, nothing in this NDRA shall constitute a release of Cubs from any Cubs Obligation.

4. Nondisturbance and Recognition.

- 4.1 In the event the City institutes any proceedings to enforce the Agreement and the FUA, the City agrees, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) hereunder:
- 4.2 The City shall not interfere with or disturb Lender's rights under the Agreement and the FUA and this NDRA; and
- 4.2.1 Lender shall not be made a party to any proceeding commenced pursuant to the Agreement and the FUA, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Security Instruments, provided nothing herein shall prevent City from giving any required notice to Lender.
- 4.3 Upon and following an Assumption, Lender shall recognize the City's rights under the Agreement and the FUA for the balance of the Term thereof. The recognition described in this Section 4.2 shall automatically become effective upon an Assumption by Lender.

5. Estoppel.

5.1 City and Cubs hereby confirm to Lender as of the date of this NDRA and to the best of their respective actual knowledge:

- a) There is no existing Event of Non-Performance, nor does there exist any situation or state of facts which, with the giving of notice or passage of time, would constitute an Event of Non-Performance;
- b) The Agreement and the FUA have not been assigned, modified or amended in any way except as set forth in Recital 1.1;
- c) The Agreement and the FUA are in full force and effect; and
- d) [confirmation of such other factual matters under the Agreement and the FUA as Lender may reasonably request]

6. Miscellaneous.

6.1 This NDRA shall be binding upon and inure to the benefit of the City, Cubs and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: City of Mesa
20 East Main Street
Mesa, Arizona 85211
Attention: City Manager

With required copies to: City of Mesa
20 East Main Street
Mesa, Arizona 85211
Attention: City Attorney

If to Cubs: Chicago Cubs Baseball Club, LLC
1060 W. Addison
Chicago, Illinois 60613
Attention: Office of the President

With required copies to: Chicago Cubs Baseball Club, LLC
1060 W. Addison
Chicago, Illinois 60613
Attention: Office of the General Counsel

With required copies to: Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016
Attention: Rebecca L. Burnham, Esq.

If to Lender: _____

Attn: _____

With required copies to: _____

Attn: _____

Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery. Any notice sent by a recognized national overnight delivery service shall be deemed effective one business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice shall be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

- 6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations.
- 6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the FUA, and supersedes all prior oral or written agreement with respect to such subordination (only to the extent, however, as would affect the priority between the FUA and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.
- 6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.
- 6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

6.7 Each party to this NDRA represents and warrants to the others all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NDRA by such party and the person executing this NDRA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein shall have the definitions set forth in the Lease.

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

Attest:

By: _____

City Clerk

Approved as to form:

By: _____

City Attorney

"CUBS"

CHICAGO CUBS BASEBALL CLUB, LLC,
a Delaware limited liability company

By: _____

Its: _____

"LENDER"

a(n) _____

By: _____

Name: _____

Its: _____

Acknowledgment by City

STATE OF ARIZONA)
)ss.
County of Maricopa)

 The foregoing was acknowledged before me this day of _____, 20____, by
_____ the _____ of the City of Mesa, on behalf of the City.

Notary Public

My Commission Expires:

Acknowledgment by Cubs

STATE OF ARIZONA)
)ss.
County of)

 The foregoing was acknowledged before me this day of _____, 20____, by
_____, the _____ of Chicago Cubs Baseball Club, LLC, a Delaware
limited liability company, on behalf of the Cubs.

Notary Public

My Commission Expires:

Acknowledgment by Lender

STATE OF ARIZONA)
)ss.
County of)

 The foregoing was acknowledged before me this day of _____, 20____, by
_____, the _____ of _____, a _____, on behalf of the
_____.

Notary Public

My Commission Expires:

EXHIBIT E
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT
[Reserved]

EXHIBIT F-1
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT

Issue Resolution Ladder

Level	COM Members	Cubs Members	Timeline for Action
Level One Project Managers	Ross Renner, Supervising Engineer	Cubs' Representative (Tim Romani)	2 business days
Level Two Senior Management	Beth Huning, City Engineer	Mark McGuire, Executive V.P. Business Operations	2 business days
Level Three Agency Leadership	Chris Brady, City Manager	Crane Kenney, President	2 business days

EXHIBIT F-2
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT
Dispute Resolution Process

1. **Arbitration and Mediation of Disputes.** Generally, because time is of the essence with regard to the performance of the Agreement, the Parties acknowledge and agree that the time for exercising the Dispute Resolution procedure is compressed.
 - 1.1 **Defined Terms.** Defined terms appear in this Exhibit with the first letter of each word in the term capitalized. Unless otherwise expressly provided herein, all defined terms appearing herein shall have the same meanings as are attributed to such terms in the Agreement of which this Exhibit is a part.
 - 1.2 **Election to Arbitrate.** Either Party may elect to resolve by arbitration, after mediation as described below, any dispute between Cubs and the City arising from or pertaining to this Agreement, including without limitation a Party's failure to pay or perform its obligations relating to the Spring Training Facilities, Public Parking and other Improvements contemplated by and otherwise relating to the Agreement ("**Dispute**").
 - 1.3 **Governing Rules.** The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association ("AAA") then in effect except to the extent modified herein.
 - 1.4 **Qualification of Mediators and Arbitrators.** Each proposed mediator and arbitrator shall have at least ten years experience in commercial and/or real estate matters in Arizona and shall be an attorney licensed to practice law in Arizona. Any Arbitrator or Mediator shall be selected, subject to the foregoing qualifications, pursuant to the practice then employed by the AAA for the selection of arbitrators and/or mediators.
 - 1.5 **Initiation of Proceeding.** The existence of any Dispute arising from or pertaining to the Agreement shall not delay or excuse any performance of a Party's monetary or other obligations under the Agreement except as expressly provided in the Agreement. If any Dispute shall arise between the Parties, then, subject to applicable statutes of limitation, either Party may initiate arbitration by serving notice to the other Party of its intention to arbitrate the Dispute (the "**Arbitration Demand**"), provided either Party (the "**Initiating Party**") shall, as a precursor to arbitration, within five business days of receipt of such Arbitration Demand, notify the other Party (the "**Responding Party**") of such Party's election to submit any Dispute, first, to non-binding mediation (the "**Mediation Notice**"). The Initiating Party shall include with such Mediation Notice a notice to the AAA of the Dispute and a request for appointment of a mediator in accordance with the Agreement and the procedures then employed by the AAA. Either party may reject the mediator selected up to two times but then must accept the choice of mediator. Prior to the mediation, the Parties shall each provide the mediator with a confidential (to be exchanged by the Parties) statement setting forth such Party's description of the nature of the Dispute and, if applicable, the relief sought. The mediation conference shall be conducted and concluded within 60 days of the Mediation Notice and within 30 days of the appointment of a Mediator.
 - 1.6 **Arbitration.** If the mediation is not successful, then, if the design professional and/or general contractor in respect of the Project are parties to the Dispute, the Dispute shall be resolved as provided in the applicable contract documents or, if the Dispute is solely

between the Parties, the Parties shall proceed to binding arbitration. A copy of the Arbitration Demand shall be filed at the local office of the AAA together with a copy of the Agreement and this arbitration provision and the appropriate filing fee as required by the AAA, which shall be delivered to the AAA on or before ten business days after the later of (i) the receipt of the Arbitration Demand, or (ii) the conclusion of the unsuccessful mediation. The Parties shall request an arbitrator be appointed as soon as possible in accordance with the selection procedures then employed by the AAA. The Dispute shall be heard by a single arbitrator with the qualifications specified in Section 1.4 of this Exhibit.

- 1.7 **Hearing.** The arbitration hearing must be held as soon as possible and, in all events, must commence within 30 days following the date on which the arbitrator is appointed, unless the arbitrator for good cause shown delays the hearing to permit discovery or otherwise. At least five days prior to the commencement of the arbitration hearing, each Party shall provide the other Party and the arbitrator with a statement of its position respecting the Dispute in question and a list of any witnesses whom such Party expects to testify at such hearing on its behalf. The arbitration proceeding shall take place in Mesa, Arizona.
- 1.8 **Scope of Award.** With the exception of monetary damages other than actual damages (e.g., punitive, consequential, or other special damages, which are expressly precluded), the arbitrator shall have the authority to award any remedy or relief a federal district court in Arizona could order or grant and which is permitted under the Agreement. The Arbitrator shall have the discretion to award attorneys' fees to the prevailing party in an amount which the Arbitrator deems reasonable in the circumstances.
- 1.9 **Fees and Costs.** Each party shall pay its own costs in arbitration and the Administrative Fees imposed by the AAA and the Parties shall share equally the costs of the arbitrator; provided, however, all such charges/fees may be awarded by the Arbitrator, in his/her discretion, to the prevailing party with arbitration as determined by the Arbitrator.
- 1.10 **Appointment of Successor.** If any arbitrator appointed pursuant to this Exhibit shall thereafter die or become unable or unwilling to act, a successor shall be appointed in accordance with the procedures continuously employed by the AAA in such circumstances.
- 1.11 **Decision Binding.** The decision or award by the arbitrator when made shall be final and non-appealable and the Parties shall be bound by such arbitration decision or award for all purposes and judgment may be entered upon it in accordance with applicable law in the Superior Court of the State of Arizona in and for the County of Maricopa.
- 1.12 **Notices.** All notices and other communications required or permitted hereunder shall be in writing and delivered in accordance with the notice provision of the Agreement. Such notices and communications shall be deemed to be given and received pursuant to such provision of the Agreement.

EXHIBIT G
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT
INSURANCE REQUIREMENTS

The City shall procure and maintain (or cause to be procured and maintained, e.g., through a “wrap” or similar insurance program with its contractor), and included within the Financing Amount, insurance during the applicable "**Coverage Period**," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Spring Training Facilities Site and/or in the performance of work or construction on the Spring Training Facilities Site by the City, Cubs and/or their agents representative, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in the Development Agreement (Spring Training Facilities) ("**Agreement**"). Neither the City nor Cubs agrees or warrants the minimum limits contained herein are sufficient to protect the other from liabilities which might arise from or in connection with the Spring Training Facilities Site, and the Parties are free to purchase additional insurance as they may determine.

- I. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The City shall provide (or cause to be provided) coverage during the Coverage Period and with limits of liability not less than those stated below:

Type	Amount	Coverage Period
Property	\$200,000,000 (If this amount exceeds the replacement values of such Property, Cubs in its discretion may approve the City carrying lower amounts of coverage which, in no event, shall be less than the full replacement value.)	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Agreement.
Workers' Compensation ("WC") and Employers' Liability ("EL")	WC: Statutory EL: \$1,000,000 each accident/each employee.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
General Liability (which shall include operations, products, completed operations, and contractual indemnity coverage)	With limits not less than \$10,000,000 each occurrence, Combined Single Limit for bodily injury and property damage and \$20,000,000 general aggregate, and with coverage at least as broad as on ISO Form CG 00 01.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.
Commercial Automobile Liability	With limits not less than \$5,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and	Coverage shall be in effect at or prior to and remain in effect for the Term of the Agreement.

	hired auto coverage as applicable, and with coverage at least as broad as on ISO Form CA 00 01.	
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage to be obtained prior to any construction activities and maintained until the substantial completion of construction.
Professional Liability	\$10,000,000	Coverage to be obtained prior to any construction activities and maintained until the substantial completion of construction.
Blanket Crime Policy	\$5,000,000	Coverage shall be in effect upon or prior to substantial completion of construction, and coverage shall thereafter remain in effect for the remainder of the Term of the Agreement.

J. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, provisions with the following effect:

1. The following shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies as required herein:
 - (a) Chicago Cubs Baseball Club, LLC; (b) Chicago Baseball Holdings, LLC; and for each of (a) and (b), its officers, directors, members, representatives, agents, employees, contractors, guests, predecessors, successors, assigns and attorneys.
2. The City's insurance coverage shall be primary and non-contributory with respect to all other Cubs insurance sources, whether collectible or not.
3. All liability insurance policies must contain cross-liability endorsements or their equivalents (i.e., that adds or provides, and does not delete, such coverage), and all policies shall include a waiver of subrogation rights against Cubs, its agents, employees and representatives.
4. All general liability policies shall include contractual liability coverage covering, among other things, the City's indemnification obligations (if any) under the Agreement.

K. **EXCESS OR UMBRELLA POLICY:** In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements provided the City obtains excess or umbrella coverage written on a "following form" basis.

L. **NOTICE OF CANCELLATION:** The City shall obtain, with all policies required herein, an Accord 25 form or an equivalent form which states the insurer shall endeavor to provide City and Cubs 30 days' prior written notice (except when cancellation is for non-payment of premium, then ten days prior notice) before suspending, voiding, or canceling the policy. Such notice shall be sent directly to Cubs, 1060 W. Addison, Chicago, Illinois 60613, Attention: Michael Lufrano, Esq., and to City of Mesa, 20 East Main Street, Mesa, Arizona 85211, Attention: City Manager.

- M. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A-VII, unless otherwise approved in writing by Cubs or otherwise provided in the Agreement. Cubs in no way agrees or warrants the above-required minimum insurer rating is sufficient to protect the City from potential insurer insolvency.
- N. **VERIFICATION OF COVERAGE:** The City shall furnish Cubs with original Certificates of Insurance and amendatory endorsements for all policies as required herein. The certificates are to be signed by a person duly authorized by the insurer. All Certificates of Insurance and any required endorsements are to be received and approved by Cubs before the applicable Coverage Period. Each applicable insurance policy must be in effect at or prior to and remain in effect for the Coverage Period. All certificates required by the Agreement shall be sent directly to Cubs, 1060 W. Addison, Chicago, Illinois 60613, Attention: Michael Lufrano, Esq. Cubs reserves the right to require complete copies of all insurance policies at any time, but not more than once each twelve consecutive months during the Term of the Agreement.
- O. **WAIVER OF SUBROGATION:** In addition to the City's waiver of subrogation requirements as provided in the Agreement and in this Exhibit (Section B), the City agrees to obtain any endorsement necessary to comply with the waiver of subrogation contained in the Agreement. The City shall obtain a worker's compensation policy endorsed with a waiver of subrogation in favor of Cubs for all work performed by the City, its employees, agents, contractors and subcontractors.
- P. **DEDUCTIBLES AND SELF-INSURED RETENTIONS:** Any deductibles in excess of \$25,000 shall be declared to and be subject to approval by Cubs. The City shall be solely responsible for the payment of any deductible (any of which amounts shall be included within and paid from the Financing Amount) and waives any rights it may have to seek recovery of such amounts from Cubs and its agents, employees and representatives. No policy shall include a retention for self-insurance.
- Q. **SUBCONTRACTORS:** The City shall require, and the General Contractor shall verify all subcontractors maintain, reasonable and adequate insurance with respect to any work on or at the Premises. The City shall require all design professionals (*e.g.*, architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

EXHIBIT H
TO SPRING TRAINING FACILITIES DEVELOPMENT AGREEMENT

When recorded, return to:

NON-DISTURBANCE AND RECOGNITION AGREEMENT
(Spring Training Facilities)

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ____ day of _____, 201__, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) CHICAGO CUBS BASEBALL CLUB, LLC, a Delaware limited liability company ("**Cubs**"); (b) _____ ("**Lender**"); and (c) CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**City**").

1. Recitals.

- 1.1 Cubs is a Party to a Development Agreement (Spring Training Facilities) entered into with the City, dated _____, 201__, and recorded in the Official Records of Maricopa County, Arizona, at _____ ("**Agreement**"), which sets forth certain rights and responsibilities of the City and Cubs with respect to certain real property owned by the City and legally described on **Exhibit A-1** and depicted on **Exhibit A-2** attached hereto (the "**Spring Training Facilities Site**") and a Facilities Use Agreement entered into with the City, dated _____, 201__, a Memorandum of which is recorded in the Official Records of Maricopa County, Arizona, at _____ ("**FUA**").
- 1.2 Cubs' rights under the Agreement and FUA are sometimes referred to herein as "**Cubs' Position**." Cubs' obligations under the Agreement and FUA are sometimes referred to herein as the "**Obligations**."
- 1.3 Lender has agreed to lend money or otherwise make credit available to Cubs, and Cubs will execute (or has executed) certain loan documents (the "**Loan Documents**") relating thereto, which may include, but are not limited to, an [*Assignment of Interest and Security Agreement*] and/or [*Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement*] for the use and benefit of Lender (the "**Security Instruments**") to secure the financing provided by Lender to Cubs (the "**Loan**"). The Security Instruments will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the interest of Cubs under the Agreement and the FUA.
- 1.5 Lender has certain rights and remedies under the Loan Documents, including but not limited to the right to foreclose the Security Instruments and effectuate a transfer of the Cubs Position.
- 1.6 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. Subordination. Subject to the provisions of this NDRA, the rights of Lender pursuant to the Security Instruments are and shall continue to be junior, inferior, subject and subordinate to the Agreement and the FUA, as the same may hereafter be modified, amended, restated or replaced.
3. Notice of Non-Performance.
 - 3.1 Lender is a "Mortgagee" under the Agreement and the FUA. The City shall give Lender (a) all written notices as required under the Agreement and the FUA (the "**Notice**"), and (b) 60 days notice following the expiration of Cubs' cure period to cure any alleged non-performance under the Agreement and the FUA including but not limited to any alleged Event of Default, as defined in the Agreement and the FUA (each, an "**Event of Non-Performance**") prior to terminating the Agreement and the FUA or invoking such other remedies as may be available to City under the Agreement and the FUA.
 - 3.2 If the City is required to give notice to more than one Mortgagee (or group of lenders) under the Agreement or FUA, the unintentional failure of the City to provide notice to any such additional Mortgagee shall not be a breach by the City of the Agreement or FUA, as applicable. In the event the City has unintentionally failed to provide notice to such additional Mortgagee or additional Mortgagees (each, an "**Omitted Mortgagee**"), the sole remedy of such Omitted Mortgagee shall be an extension of any applicable cure period in respect of the Default or other non-performance claimed in the notice to Cubs for a period of thirty (30) days from the date such Omitted Mortgagee discovers and provides notice to the City it has not received the notice described in this Section 3.2; provided, however, if such Omitted Mortgagee fails to discover and provide notice to the City it has not received the notice described in this Section 3.2 within sixty (60) days following expiration of the applicable Cure Period, such Omitted Mortgagee shall have no cure (or additional cure) rights pursuant to this Section 3.2. Notwithstanding anything in this NDRA to the contrary, in the event of a discrepancy or ambiguity in or between the terms of this NDRA and the Agreement or FUA (as applicable), the Agreement or FUA (as applicable) shall prevail in each instance.
 - 3.3 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth above for curing an Event of Non-Performance (subject to extension as set forth hereinafter), in its sole discretion to: (a) to cure the Event of Non-Performance, in which event Cubs shall retain the Cubs Position and the Agreement and FUA will continue in full force and effect; (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Security Instruments) to assume the Cubs Position (to "**Assume**" or an "**Assumption**"); and/or (c) to exercise its rights and remedies under the Loan Documents including its right to foreclose the Security Instruments. Lender shall give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender. In the event Lender elects to exercise its rights under subclause (c) above, the City shall defer exercising any of its remedies under the Agreement or the FUA, including any right to terminate same, for such period as is reasonably necessary to enable Lender to exercise its rights under the Loan Documents, not to exceed 180 days, provided Lender promptly commences and diligently pursues such exercise.
 - 3.4 If Lender agrees to Assume the Cubs Position, Lender and the City shall execute an amendment to the Agreement and the FUA, respectively (each an "**Amendment**") to memorialize such Assumption and shall cause the Amendment to be recorded in the

Official Records of Maricopa County, Arizona. The Amendment shall state Lender has fully assumed the Cubs Position and Lender is thereafter substituted for Cubs with respect to all Cubs Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement and the FUA following the date of the Assumption. The execution or approval by Cubs of the Amendment shall not be necessary or required, and upon execution and recordation of the Amendment, the City shall (i) look to Lender and/or Cubs for performance of the Cubs Obligations from and after the date of the Assumption and (ii) make to Lender all payments, and render in favor of Lender all performance, required to be made by the City to Cubs under the Agreement and the FUA.

- 3.5 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Security Instruments, or any other acquisition by Lender of the Cubs Position in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Cubs Position to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. § 33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), then, at Purchaser's election, the Purchaser shall be deemed to have assumed the Cubs Position following the date of such Assumption. Upon the acquisition of the Cubs Position by a Purchaser and the Purchaser's election to assume the Cubs Obligations, the City shall (i) look to Purchaser and/or Cubs for performance of the Cubs Obligations and (ii) make to Purchaser all payments, and render in favor of Purchaser all performance, required to be made by the City to Cubs under the Agreement and the FUA.
- 3.6 Unless and until an Assumption occurs, as defined herein, nothing in this NDRA shall constitute an assumption by Lender of any Cubs Obligation and the City shall look solely to Cubs for the performance of the Cubs Obligations. Cubs shall continue to be liable for all of the Cubs Obligations and shall perform all such Cubs Obligations, shall comply with all terms and conditions of the Agreement and the FUA applicable to Cubs, and shall take such steps as may be necessary or appropriate to secure performance by the City under the Agreement and the FUA.
- 3.7 Whether before or after an Assumption as defined herein, nothing in this NDRA shall constitute a release of Cubs from a

4. Nondisturbance and Recognition.

- 4.1 In the event the City institutes any proceedings to enforce the Agreement and the FUA, the City agrees, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) hereunder:
- 4.2 The City shall not interfere with or disturb Lender's rights under the Agreement and the FUA and this NDRA; and
- 4.2.1 Lender shall not be made a party to any proceeding commenced pursuant to the Agreement and the FUA, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Security Instruments, provided nothing herein shall prevent City from giving any required notice to Lender.

- 4.3 Upon and following an Assumption, Lender shall recognize the City's rights under the Agreement and the FUA for the balance of the Term thereof. The recognition described in this Section 4.2 shall automatically become effective upon an Assumption by Lender.

5. Estoppel.

- 5.1 City and Cubs hereby confirm to Lender as of the date of this NDRA and to the best of their respective actual knowledge:
- a) There is no existing Event of Non-Performance, nor does there exist any situation or state of facts which, with the giving of notice or passage of time, would constitute an Event of Non-Performance;
 - b) The Agreement and the FUA have not been assigned, modified or amended in any way except as set forth in Recital 1.1;
 - c) The Agreement and the FUA are in full force and effect; and
 - d) [confirmation of such other factual matters under the Agreement and the FUA as Lender may reasonably request]

6. Miscellaneous.

- 6.1 This NDRA shall be binding upon and inure to the benefit of the City, Cubs and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.
- 6.2 Except as otherwise required by law, any notice required or permitted under this NDRA shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: City of Mesa
20 East Main Street
Mesa, Arizona 85211
Attention: City Manager

With required copies to: City of Mesa
20 East Main Street
Mesa, Arizona 85211
Attention: City Attorney

If to Cubs: Chicago Cubs Baseball Club, LLC
1060 W. Addison
Chicago, Illinois 60613
Attention: Office of the President

With required copies to: Chicago Cubs Baseball Club, LLC
1060 W. Addison
Chicago, Illinois 60613
Attention: Michael Lufrano, Esq.

With required copies to: Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016
Attention: Rebecca L. Burnham, Esq.

If to Lender: _____

Attn: _____

With required copies to: _____

Attn: _____

Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery. Any notice sent by a recognized national overnight delivery service shall be deemed effective one business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice shall be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

- 6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations.
- 6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the FUA, and supersedes all prior oral or written agreement with respect to such subordination (only to the extent, however, as would affect the priority between the FUA and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.
- 6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.
- 6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

6.7 Each party to this NDRA represents and warrants to the others all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NDRA by such party and the person executing this NDRA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein shall have the definitions set forth in the Lease.

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

Attest:

By: _____

City Clerk

Approved as to form:

By: _____

City Attorney

"CUBS"

CHICAGO CUBS BASEBALL CLUB, LLC,
a Delaware limited liability company

By: _____

Its: _____

"LENDER"

a(n) _____

By: _____

Name: _____

Its: _____

Acknowledgment by City

STATE OF ARIZONA)
)ss.
County of Maricopa)

 The foregoing was acknowledged before me this day of _____, 20____, by
_____ the _____ of the City of Mesa, on behalf of the City.

Notary Public

My Commission Expires:

Acknowledgment by Cubs

STATE OF ARIZONA)
)ss.
County of)

 The foregoing was acknowledged before me this day of _____, 20____, by
_____, the _____ of Chicago Cubs Baseball Club, LLC, a Delaware
limited liability company, on behalf of the Cubs.

Notary Public

My Commission Expires:

Acknowledgment by Lender

STATE OF ARIZONA)
)ss.
County of)

 The foregoing was acknowledged before me this day of _____, 20____, by
_____, the _____ of _____, a _____, on behalf of the
_____.

Notary Public

My Commission Expires:
